

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2011 DEC -6 PM 12:11 ✓

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BY: C. Flick

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FORTY-FOUR

MAY 11, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

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2 FOR THE COUNTY OF YAVAPAI
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5 Plaintiff,)
6 vs.) Case No V1300CR201080049
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Proceedings had before the Honorable

2 WARREN R. DARROW, Judge, taken on Wednesday,
3 May 11, 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.

PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray, the attorneys -- all the attorneys are present. Yes.

And I -- I was just informed that the state wanted to raise a legal point.

Mr. Hughes.

MR. HUGHES: Thank you, Your Honor.

Yesterday afternoon during the cross-examination there was a use of what appeared to be a transcript from another witness's testimony in this trial. The transcript is not an exhibit at trial. Parts of it were read into the record.

There are a number of problems with doing that sort of a procedure. The state objects to the defendant's use of a transcript from another witness for several reasons. First of all, the rules of evidence don't explicitly allow the use of a transcript.

I know it's statements that are made in court. But the jury has been informed there will be no transcript available to them. And then to be reading from portions of a transcript, I think,

will allow the jury or cause them to wonder if indeed they will have a portion available.

Another issue that's created, Your Honor, is it puts the opposing side at a disadvantage. The defense has the transcript. They can choose to read a particular statement that was made. But it ignores the fact that the same topics may have been made on direct or on recross, as well as the point where the particular statement that's being read into the record.

For 106 purposes, if the state does not have the entire transcript available to it, it's very difficult to put a proper context of what the witness may have said in direct or in cross or in redirect into context with the particular statement that may be read.

For those reasons, I think, the state does object to the use of it. If a transcript of a witness's testimony is going to be used, I would ask that the entire transcript of that witness's testimony from the beginning of direct through the end of redirect be marked and admitted.

It would be appropriate to read obviously from something that's in evidence. But it's inappropriate to read from something that is out of

evidence and that counsel is purporting to tell the jury is a transcript.

THE COURT: Mr. Hughes, do you have some legal authority?

MR. HUGHES: I don't. And that's just the problem, Your Honor. There's no legal authority that I could find on this particular issue.

I do know, again, there's -- there's no authority to permit a person to read from a document that's not in evidence and to read that to the jury. And that's -- that's one of the problems.

The other issue is the 106 issue as far as not having the ability to put proper context on that statement.

THE COURT: Thank you.

Ms. Do.

MS. DO: Well, Your Honor, I first note that the state does have access to transcripts. I know there was an issue earlier on about the defense having live notes, and the Court took steps to make sure that the state had that available to it. And it's not availed itself of that.

When I -- first of all, I read from the transcript. It is testimony that's been received

in evidence in this case. I don't think that there's a hearsay issue there. And counsel cannot provide authority to the Court.

Thirdly, that was done after counsel made an objection that I misstated the testimony. So to make sure that that wasn't the case, I referred to the transcript. And prior to doing that I showed it to counsel. Counsel didn't object at that time.

MR. HUGHES: And, Your Honor --

THE COURT: Thank you.

Mr. Hughes.

MR. HUGHES: I'm sorry.

The issue, again, is these topics are things that the witness was asked in general on direct, on cross, and on redirect. And so to take a particular statement that may be in conflict with the other witness's testimony and other parts of that witness's appearance in court does misstate what the witness had to say to the jury.

But without the complete trial transcript, the state is unable to provide or give that context to the jury with the same sort of authority that a jury will give to something that purports to be a transcript. Because all the state can say is, well, don't you remember maybe on

1 redirect the witness said this, as opposed to
2 reading it verbatim from what purports to be a
3 transcript.

4 With respect to the live note, the live
5 note is something that is available transitorily
6 only during the time the witness is testifying. If
7 the parties want an actual printed transcript, it's
8 my understanding that they need to purchase that.
9 And, again, it's something the state doesn't have
10 the resources to purchase transcript from every
11 particular witness in this case.

12 MS. DO: I would just add to that, Your Honor,
13 again, when it was done, there was no objection
14 from the state. I showed counsel as a courtesy
15 what I was referring to. I do not intend to do
16 that with this witness any further based upon the
17 remainder of my cross-examination.

18 THE COURT: Another issue that is just
19 unusual. It doesn't come up. It would seem to me
20 that in relaying a statement from another witness
21 to someone who's on the stand for a reaction would
22 be something that would be done.

23 And, Mr. Hughes, to force paraphrasing is
24 rather dangerous when you're -- you know --
25 anytime, I suppose, when you're talking about

10

1 testimony.

2 We've had many objections about that
3 misstates the testimony from days ago, weeks ago.
4 And the Court has to go to that instruction I have
5 given so many times in this case. It's up to the
6 jurors to assess the question. And if it's valid,
7 based on the evidence, does it have a proper
8 premise?

9 It appears the problem may be taken care
10 of now because Ms. Do indicates there are not --
11 and she doesn't have more of that. But in the
12 future, my -- I think they're appropriate
13 questions. Whether or not giving it the sanction
14 of a transcript, which in many instances, probably
15 not an official transcript yet. Because I think
16 when the transcripts are produced so rapidly, some
17 of them are still unsigned and they're not even
18 official.

19 So I understand your point.

20 And whether it has to do with the
21 phrasing of the question, Ms. Do, if it were to
22 come up with another witness or something about if
23 there were testimony to this effect, without
24 putting on the sanction of it being a transcript
25 because it may well be an unofficial transcript at

1 that time but probably pretty accurate, then if the
2 question is formed in that phrase without bringing
3 in that extra authority of saying, this is the
4 transcript, maybe that's the way to approach it.
5 But it appears that's not going to be presented
6 again with this witness anyway.

7 Anything else, Mr. Hughes, from the
8 state?

9 MR. HUGHES: No, Your Honor.

10 THE COURT: Mr. Li.

11 MR. LI: Your Honor, just quickly. Just a
12 scheduling issue. All of us are -- you know --
13 trying to figure out what -- when the end of trial
14 might be and -- and -- you know -- deal with our
15 families and all of those sorts of things.

16 And I don't know whether or not we are
17 going to stick with the June 10th -- I sure hope we
18 are planning to stick to that as a date for the end
19 of this trial.

20 And I heard the Court yesterday
21 suggest -- you know -- that the remaining state
22 witnesses would be -- that the Court would monitor
23 how much time and how much would be cumulative.
24 But I just want to get a feeling for what I can
25 tell the home front.

12

1 Also we have some scheduling issues
2 relating to our -- our expert, who has a prepaid
3 trip from June 4th through the 12th. You know --
4 we are going to work with the Court. But we
5 obviously just want to make sure we have some sense
6 of what -- what this trial schedule -- when it's
7 going to terminate.

8 THE COURT: I'm glad you brought that up. If
9 I'm going to impose time limits, they have to apply
10 to both sides. And I indicated an issue that can
11 come up with putting a time limit on the defense is
12 what everybody knows, especially because it has to
13 be fair. So any time limits have to work for both
14 sides. And I have to keep that in mind if I'm
15 going to impose that. And there has to be a fair
16 limitation.

17 And Mr. Li, I'm just going to say, there
18 was a request for this hiatus. I was reluctant.
19 Mr. Hughes, I think, spoke to it directly from
20 that -- at that time. And there was not an
21 objection, but it was really a jury request, this
22 hiatus.

23 The examinations have been lengthy on
24 both sides. And I don't know exactly what to say.
25 I think the trial should be completed. I

1 indicated -- I'm not going to put some limitation
2 on the state's witnesses at this time. I want to
3 see what happens when these witnesses from the 2009
4 event are called.

5 I do have to bring up to the jury the
6 fact that somebody has made a request and expressed
7 his or her concern, I'll say, about trial length.
8 I need to let the jury know, that person know, that
9 it's not just being ignored. I don't want that
10 juror to be preoccupied with that.

11 But I said before I expected this trial
12 to be done within -- in the time limits. And the
13 state filed the pleading indicating that they did
14 not believe it was unrealistic. But since that
15 time there has been a reduction of witnesses.

16 So, Mr. Hughes or Ms. Polk, if you could
17 address where you are with that and what Mr. Li has
18 just raised.

19 MS. POLK: Your Honor, the state does have a
20 concern about the ability of all the parties to
21 complete within the time limits. As the Court
22 knows from my statements yesterday, we have done a
23 significant reduction of our witness list. We've
24 withdrawn several witnesses. Although we do
25 reserve the right to change our opinion or call

1 them in rebuttal.

2 But in an attempt to move this case
3 along, we have significantly reduced the number of
4 witnesses we originally intended to call.

5 I believe, without including Dr. Dickson,
6 we've called 26 witnesses in 34 trial days, which
7 is not a trial schedule that I've ever encountered
8 before. My experience -- my anticipation was we'd
9 be able to move through two witnesses a day with
10 the exception of experts and -- and we just have
11 not moved along at that pace.

12 We are doing our best. We are doing our
13 best to narrow down the number of witnesses and
14 conclude it, giving the defense the time that they
15 need. Mr. Li estimated five to six days yesterday.
16 We are doing our best to make that happen.

17 I'm concerned, however, that if it can't
18 happen, Your Honor, what happens with this jury and
19 our reading of the cases is that the Court should
20 poll the jury to see if they're going to be
21 available. That would be my request.

22 Without committing that you are going to
23 go beyond our last trial date, which I believe is
24 June 10th, I believe it would be prudent to at
25 least poll the jury to see who's available beyond

1 that date, and to have some kind of plan in place
2 if, for some reason, we can't finish within the
3 time.

4 We're going to do our best to do it. I
5 think we have got ourselves -- we've narrowed
6 ourselves down to nine witnesses. And I'm not sure
7 how many trial days we have left.

8 MR. LI: Your Honor, it would be helpful in
9 this if we could know who the nine witnesses are.
10 Because there may be -- you know -- it may be
11 easier to figure out how many trial days are
12 required for the nine witnesses.

13 MS. POLK: And, Your Honor, I've already given
14 that to Mr. Li.

15 MR. LI: Not -- not quite.

16 THE COURT: Okay. Well, that's going to
17 happen. That's what I'm hearing. I've been in a
18 position of having to deal with these issues and
19 extend trials and work with jurors and have
20 repeated meetings and scheduling issues.

21 I have a number myself that arise by the
22 end of June. So I -- I expect the trial to be
23 completed. That's what I'm going to say. At some
24 point soon after you both look at the witnesses and
25 give me a realistic gauging of time, if I have to,

1 I'll bring it up with the jurors and have them
2 express their -- I'll probably do that by having
3 them tell me what their plans are over the next two
4 weeks or something like that past the regular time.
5 I don't even want to think about that. I want to
6 think about the trial being completed on time.

7 MR. LI: On June 10th?

8 THE COURT: Yes.

9 MR. LI: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Recess.)

12 (Proceedings continued in the presence of
13 jury.)

14 THE COURT: The record will show the presence
15 of the defendant, Mr. Ray; the attorneys, the jury.
16 The witness, Dr. Dickson, has returned to the
17 stand.

18 Ms. Do.

19 MS. DO: Thank you, Your Honor.

20 CROSS-EXAMINATION (Continued)

21 BY MS. DO:

22 Q. Good morning, Dr. Dickson.

23 A. **Good morning.**

24 Q. Let me pick up -- yesterday we spoke
25 about this mnemonic, SLUDGE. And then one other

- 1 doctor had an "M" in there. You recognize the
2 mnemonic; correct?
- 3 **A. I do.**
- 4 **Q.** And this is a mnemonic that they teach in
5 medical school to help you remember the various
6 signs and symptoms that might show up when you have
7 a cholinergic toxidrome; correct?
- 8 **A. Correct.**
- 9 **Q.** And we all know now that a cholinergic
10 toxidrome includes organophosphate exposure;
11 correct?
- 12 **A. Yes.**
- 13 **Q.** There is another dumbbell -- I'm sorry.
14 Another mnemonic. And you agree with me that when
15 someone uses SLUDGE with an "M," the "M" stands for
16 miosis; correct?
- 17 **A. I don't use that. A DUMBBELL is where**
18 **miosis is and what I learned.**
- 19 **Q.** Okay.
- 20 **A. I'm sure that works fine.**
- 21 **Q.** All right. I don't want you to agree if
22 you don't know. But do you have any reason to
23 dispute that the "M" on the SLUDGEM is for miosis?
- 24 **A. I do not.**
- 25 **Q.** Okay. You're also familiar with another

- 1 mnemonic, DUMBBELL; correct?
- 2 **A. Correct.**
- 3 **Q.** Okay. And this is another mnemonic that
4 helps you, and they teach it in medical school, to
5 remember the signs and symptoms, again, of a
6 cholinergic toxidrome; correct?
- 7 **A. Correct.**
- 8 **Q.** And, again, that includes organophosphate
9 exposure?
- 10 **A. Correct.**
- 11 **Q.** What does the "D" stand for?
- 12 **A. Well, it's got a couple ones. It could**
13 **be diarrhea or it could be diaphoresis.**
- 14 **Q.** And diaphoresis, we talked about
15 yesterday, is sweating; correct?
- 16 **A. Correct.**
- 17 **Q.** What does the "U" stand for?
- 18 **A. Urination.**
- 19 **Q.** And the "M"?
- 20 **A. That's the one that I learned was for**
21 **miosis.**
- 22 **Q.** And miosis is pinpoint pupils; correct?
- 23 **A. Correct.**
- 24 **Q.** And the "B"?
- 25 **A. Well, there's a couple "Bs." It can be**

- 1 **bronchorrhea, which means -- we talked about**
2 **salivation. Your saliva can -- your mouth can**
3 **secrete saliva. But your bronchials can secrete**
4 **liquid as well.**
- 5 **Q.** Okay. So that bronchorrhea, broncho-
6 refers to the -- the bronchial mucosa; correct?
- 7 **A. Right. The farther -- not all the way to**
8 **the tissue of your lungs but the airways between**
9 **your mouth. And then as it breaks down, it goes to**
10 **your trachea, and then it goes to bronchials. Kind**
11 **of like branches of a tree. It's still part of the**
12 **tree, not the leaves.**
- 13 **Q.** Thank you. And when we say,
14 bronchorrhea, that means that there is an excessive
15 buildup of mucus; correct?
- 16 **A. Yes. Of fluid.**
- 17 **Q.** Fluid?
- 18 **A. Yeah.**
- 19 **Q.** And that comes out through the trachea,
20 the mouth, as foaming or frothy sputum; correct?
- 21 **A. No.**
- 22 **Q.** What does it come out as?
- 23 **A. It looks a little like saliva.**
- 24 **Q.** You think it's saliva?
- 25 **A. Correct.**

- 1 **Q.** Okay. Have you seen any literature that
2 says that it comes out as frothy sputum?
- 3 **A. Well, pulmonary edema is frothy sputum.**
4 **And that can -- if you get excessive bronchorrhea,**
5 **salivation -- basically what happens with these**
6 **people is they drown in their own spit. It**
7 **sounds -- I'm sorry to be frank. But that's what**
8 **happens.**
- 9 **And that's the dangerous part of**
10 **organophosphate poisoning. There are a lot of**
11 **symptoms of them, but the one that -- and as we**
12 **talked about before, if you come to my ER and I'm**
13 **suspecting that, I'm looking for are you drowning**
14 **in your own spit. And that's where people do very**
15 **poorly with.**
- 16 **And that's the signs and symptoms that we**
17 **treat. That's where the drugs are used. The one**
18 **we use is atropine. And that just dries you out.**
19 **And that's the -- that's the problem with it.**
- 20 **Q.** Okay. It's atropine and 2-PAM that's
21 used; right?
- 22 **A. Well, we can -- would you like to discuss**
23 **that?**
- 24 **Q.** We can get to it.
- 25 **A. Okay.**

1 **Q.** We'll just finish with this mnemonic.
 2 So, to be clear, it is your
 3 understanding, it's your opinion, that when a
 4 person is poisoned with organophosphates or some
 5 cholinergic substance, they literally drown in
 6 their spit?
 7 **A.** That is one of the most initial
 8 life-threatening causes. When you come to me,
 9 that's what I'm looking for to reverse.
 10 Now, there are a lot of other effects
 11 which we're discussing, but that's the
 12 life-threatening cause of organophosphate poisoning
 13 in the acute phase when somebody comes.
 14 **Q.** Okay. So I can understand it, either
 15 bronchorrhea, pulmonary edema results in excessive
 16 fluid in either the lung cavities or in the
 17 bronchial; correct?
 18 **A.** Okay. Well, we're -- we're doing a
 19 different name calling here. The difference is --
 20 between pulmonary edema is more of a late-stage
 21 finding. So initially you start to drown in your
 22 own spit. You can't breathe because there's too
 23 much saliva in your lungs.
 24 Now, when your lungs start getting worse
 25 and worse and worse and they start leaking fluid,

22

1 that means blood -- we talked a little bit earlier
 2 about the way that your lungs and your blood
 3 systems exchange oxygen and carbon dioxide is right
 4 down at the small level, there's a thin layer
 5 between lung and the arteries and the veins. And
 6 that's where gas can go back and forth.

7 Now, when that membrane starts to break
 8 down, the blood and fluid from your system -- from
 9 your circulatory system leaks into your lungs and
 10 then that starts coming up. And that's where it
 11 gets pink because of -- there's some blood involved
 12 there.

13 The difference is in -- generally when
 14 you're salivating, your saliva isn't bloody, isn't
 15 pink. Now, it can be if you've got a cut in your
 16 mouth. But that's the telltale sign, the
 17 difference, between pulmonary edema and excessive
 18 lacrimation or excessive bronchorrhea. That's
 19 saliva that's going down and clogging up your --
 20 your lungs.

21 **Q.** So is it your opinion that when a person
 22 is poisoned by organophosphates or some other
 23 cholinergic substance that they literally drown in
 24 their spit?

25 **A.** That is the most life-threatening cause

1 of it.

2 **Q.** Okay. We're going to return to that.
 3 What does the other "B" stand?

4 **A.** Bradycardia.

5 **Q.** Are you sure about that?

6 **A.** Uh-huh. I'm sure there are other ones
 7 too.

8 **Q.** What does "bradycardia" stand for?

9 **A.** Bradycardia is slow heart rate.
 10 Tachycardia -- the normal heart rate for a human
 11 being generally is between 60, that's on the low
 12 side, and high side is a hundred. So if you're
 13 bradycardic, you're generally below 60.

14 **Q.** Slow heartbeat; correct?

15 **A.** Correct.

16 **Q.** Can you also see fast heartbeat?

17 **A.** Yeah.

18 **Q.** That's tachycardia?

19 **A.** That's tachycardia.

20 **Q.** When would you see tachycardia?

21 **A.** Well, that's when we need to go into --
 22 that's not part of DUMBELLS. Do you want to do
 23 that?

24 **Q.** No, no, no. If you can tell the jury,
 25 when would you see tachycardia?

24

1 **A.** Well, the organophosphates bind -- effect
 2 in three ways. They bind two different receptors,
 3 ones called a muscarinic, ones called a nicotinic.
 4 And those have two separate effects.

5 The last one is it can cause central
 6 nervous system signs and symptoms to the brain. So
 7 the -- I hope I'm getting this right, because I
 8 have to look it up every time. The muscarinic is
 9 this and the nicotinic -- again, I look this up
 10 every time. I don't propose to say that I memorize
 11 this all the time. Every time we have this, we
 12 look this up.

13 The nicotinic is a different receptor.
 14 And that's going to cause sometimes the opposite
 15 symptoms. It can cause you to be hypertensive,
 16 which means your blood pressure goes up. It can
 17 make your pupils get big instead of small. And it
 18 can make your heart rate go up and make it
 19 tachycardic.

20 So this is where it becomes challenging.
 21 You can say, which receptors are we looking at?

22 **Q.** Okay. So you didn't -- slow heartbeat,
 23 bradycardia, when it binds to the muscarinic
 24 receptor; right?

25 **A.** I believe that's the right receptor. I

1 have to look it up to guarantee it for you.

2 Q. And you're going to see fast heart rate
3 when the organophosphate compound binds to the
4 nicotinic receptor?

5 A. Yes. There's two -- there's two
6 different receptors.

7 Q. Got it. Can you tell the jury what a
8 receptor is.

9 A. Great question. So what happens is on
10 the ends of these -- these nerves, there's a place
11 where the messenger goes in and gives it's message.
12 So it's, basically, a receiving dock. Think of the
13 back of your local Walmart. You know, the
14 messenger is the big truck backing up in its
15 receiving bay at Walmart. And it's receiving in
16 the information or the product. So that's the
17 receptor.

18 Q. Okay. Receptors live on, basically, the
19 cell surface; correct?

20 A. Correct.

21 Q. And it tells the cells what to do;
22 correct?

23 A. Correct.

24 Q. Sometimes it tells it to divide?

25 A. Sure.

1 Q. Sometimes it tells it to break down?

2 A. Sure.

3 Q. Okay. And the organophosphate compound
4 binds to one of those two receptors, and that's
5 what happens when you see these problems is that it
6 inhibits the receptors; correct?

7 A. Actually, that's not how it works. It's
8 kind of complicated. What happens is that you have
9 a receptor. You have a compound --

10 Can I draw a picture?

11 Q. If you need to, yeah.

12 A. It's a -- there's a chemical called
13 "acetylcholinesterase." Try not to fall asleep. I
14 know this is boring.

15 But you have acetylcholine, ACH. And
16 that's actually the messenger. Okay? Now, you're
17 always putting -- if you have one cell here and one
18 cell here, and they're talking to each other --
19 okay? -- with the acetylcholine. Okay? There is
20 this little receptor.

21 Now, there is acetylcholinesterase, ACHE.
22 And what that does is breaks down acetylcholine.
23 Okay? You've got some coming in. It sends its
24 message. And then it's got to be broken down,
25 otherwise it'll keep sending message, and you're

1 going to get more and more and more of this
2 acetylcholine in there.

3 What organophosphates do is they bind
4 this acetylcholinesterase, which breaks down that.
5 So what happens is it sends out acetylcholine. It
6 send its message, and it's received. And instead
7 of going away, we have it broken down. It's still
8 there. And it sends out another ACH and another
9 ACH.

10 And the next thing you know, you just got
11 tons and tons and tons of this stuff around. And
12 so these receptors are just getting bombarded with
13 all this information.

14 So it's not that the -- it's not the
15 organophosphates are actually sticking here,
16 they're just preventing the messenger from being
17 broken down.

18 Q. These are enzymes; right?

19 A. This is an enzyme. An enzyme is
20 something that does an action --

21 Q. Right.

22 A. Breaks it down. This is the messenger.
23 The enzyme breaks down the messenger.

24 Q. Okay. And I think that's what I meant is
25 the organophosphate compound inhibits the enzyme,

1 which you told the jury, acetylcholinesterase,
2 ACHE; correct?

3 A. Yes.

4 Q. Which then results in an abundance of
5 ACH; correct? So one of things that you'll see in
6 lab results of somebody who's been exposed to
7 organophosphates is excessive ACHE activity;
8 correct?

9 A. Well, that's the question. So if you
10 have somebody that's got acetylcholinesterase
11 that's been bound, the theory is --

12 You want to go back to that.

13 So that's -- we talked a little bit about
14 this yesterday. Is there a test? So why don't we
15 know -- if this thing is bound and not working,
16 actually the activity would be not working; right?
17 So you think, well, let's see how much
18 acetylcholine is in here and how much activity is
19 there. So that would tell you, well, yes. The
20 acetylcholinesterase, the breakdown, isn't working.
21 And then you say, wow. This is or is not
22 organophosphate poisoning.

23 The problem with that test is if I test
24 your level and your level and your level, they're
25 all different. You check kids' levels, they're

1 different. There are medications that you take
2 that can adjust these levels.

3 So the blood test, as we talked about
4 yesterday, flip of the coin. That's why it's not
5 available in my hospital and in most hospitals.
6 And the usefulness of it at the time -- again,
7 we're talking about when somebody is dying and
8 sick. I'm not -- if someone is just salivating out
9 their mouth and they're drowning, I'm not going to
10 draw an acetylcholinesterase level and see what
11 happens before I treat.

12 This is an important thing we have to
13 treat right away. And that's when we do things
14 like put them on a ventilator. We give them
15 atropine, which is a medication that, basically,
16 reverses that.

17 Q. Dr. Dickson, I think we understand that
18 when you are in the ER and you've got a person
19 coming in whose life may be threatened, your first
20 goal and priority is to treat; right?

21 A. Absolutely.

22 Q. And you're going to do that based upon
23 the objective manifestation of signs and symptoms.
24 You may not be able to access lab tests right away.
25 Correct?

1 A. Absolutely.

2 Q. And I think Dr. Cutshall, who testified
3 to this jury, explained that.

4 Is it your testimony to this jury that
5 there is no reliable test to determine whether or
6 not somebody has organophosphates in their system?

7 A. It's a 50/50 chance, so --

8 Q. Flip of the coin?

9 A. Yeah. So I wouldn't call that a reliable
10 test.

11 Q. Okay. We're going to get back to that.
12 Now, are you sure this is bradycardia?

13 A. In my mnemonic that's what I learned.

14 Q. What does the "E" stand for?

15 A. Emesis.

16 Q. Can you tell the jury what that is?

17 A. Vomiting.

18 Q. What does the "L" stand for?

19 A. Lacrimation, which is tearing, crying.

20 Q. And the "S"?

21 A. Salivation.

22 Q. Okay. So this is "essentially" just
23 another mnemonic to remember the various signs and
24 symptoms you see in a cholinergic toxidrome;
25 correct?

1 A. Correct.

2 Q. Now, I know we talked a lot about
3 yesterday how you use eMedicine to write your
4 report on heat illnesses. Correct?

5 A. Yes. We did.

6 Q. And when I met with you, I think it was
7 two days ago, we talked a little bit about
8 organophosphates; correct?

9 A. We did.

10 Q. And you'd indicated to me that you had
11 also looked up eMedicine to review organophosphate
12 toxicity; correct?

13 A. We -- yes. Absolutely.

14 Q. And that was a stack of documents that
15 you gave me on the 9th?

16 A. Yes.

17 Q. And, as we talked about yesterday, these
18 were documents that appear to have been printed on
19 May 3rd; correct?

20 A. Correct.

21 Q. About eight days ago?

22 A. Yes.

23 Q. Now, let me refer --

24 May I have one moment, Your Honor?

25 THE COURT: Yes.

1 MS. DO: Thank you.

2 Q. I'm going to -- you would agree with me
3 that, for example, Wikipedia is not a very reliable
4 source; correct?

5 A. I would not use it as my medical
6 judgment. But I do look for information. One of
7 the reasons I do do that is because a lot of people
8 get information from that, and we have patients
9 that say they read things online. I want to know
10 what they're reading and to be able to verify what
11 they're reading and see if it's true or not true.

12 Q. Understood. You are aware, are you not,
13 that, for example, they tell students at
14 universities and colleges not to rely on Wikipedia
15 because it's unreliable?

16 A. Again, exactly. But unfortunately a
17 large population uses it, and I've got to be able
18 to communicate with my patients.

19 Q. Okay. I understand. Putting that aside,
20 I'm talking about the research you conducted on or
21 about May 3rd, 2011, for which you provided me with
22 some documents.

23 Okay?

24 A. Okay.

25 Q. And that's a stack that the jury has seen

1 that you gave to me two days ago when we met in
2 Mr. Hughes' office?

3 **A. Correct.**

4 **Q.** And that included research that you had
5 conducted about the various chemicals you talked
6 about on Wikipedia; correct?

7 **A. Yeah. Yes, I did.**

8 **Q.** And also eMedicine; correct?

9 **A. Yes. And the MSDS as well.**

10 **Q.** All right. Now, you agreed with me
11 yesterday when I showed you what was marked as
12 Exhibit 1008 that this actually comes from a book
13 called "Goldfrank's Toxicologic Emergencies";
14 correct?

15 **A. Correct.**

16 **Q.** And by that title you understand that
17 this deals with exactly what we're talking about --
18 poisons; right?

19 **A. Toxicologic emergencies. Yeah.**

20 **Q.** Okay. Now, I'm going to refer you to
21 page 1502 under the title, "Clinical
22 Manifestations," acute toxicity, organic phosphorus
23 compounds. Correct?

24 **A. Yes.**

25 **Q.** Organic phosphorus is another way to say

1 organophosphates; correct?

2 **A. Correct.**

3 **Q.** Do you see where it has DUMBELLS?

4 **A. Correct.**

5 **Q.** Okay. And let's review that. DUMBELLS,
6 the "D" stands for?

7 **A. Diarrhea or diaphoresis.**

8 **Q.** What does it say in the article?

9 **A. This says, defecation.**

10 **Q.** And, again, you would agree that this is
11 a reliable source for doctors to refer to; correct?

12 **A. Well, it's a mnemonic.**

13 **Q.** No, this, sir.

14 **A. Oh, yeah. Absolutely.**

15 **Q.** Okay. And so in this article, the "D"
16 stands for what?

17 **A. In this article it stands for defecation.**

18 **Q.** And the "U"?

19 **A. Urination.**

20 **Q.** Okay. So we got that one right.
21 The "M"?

22 **A. Miosis.**

23 **Q.** The "B"?

24 **A. Bronchospasm or bronchorrhea.**

25 **Q.** Not bradycardia; right?

1 **A. That's what this one says.**

2 **Q.** And the "E" is emesis, "L" is
3 lacrimation, and the "S" is salivation; correct?

4 **A. Correct.**

5 **Q.** Have you ever seen a mnemonic published
6 with one of the "Bs" being bradycardia?

7 **A. I'm sure I have.**

8 **Q.** Okay. Let me refer back to -- well,
9 maybe the jury will remember.

10 When Dr. Cutshall was here, we talked
11 about something called the "killer bees." Have you
12 ever heard of that?

13 **A. No.**

14 **Q.** Never heard of killer bee?

15 **A. Nope. Well, killer bees --**

16 **Q.** Not those.

17 **A. -- not as in the sense of**
18 **organophosphates poisoning. No.**

19 **Q.** All right. Now, is it your understanding
20 that the reason why organophosphates is -- is so
21 fatal, is so lethal, is because of the bronchorrhea
22 and the bradycardia, which all has to do with our
23 respiratory system?

24 **A. Well, I thought you said it wasn't**
25 **bradycardia.**

1 **Q.** I'm sorry. I said -- thank you for
2 correcting me.

3 Bronchorrhea -- meaning what you have
4 there. Bronchorrhea and bronchospasm?

5 **A. Well, the biggest problem is you're**
6 **actually getting too much fluid in your lungs.**
7 **Now, when you get anything in your lungs, like**
8 **people with asthma, if you have asthma, you get**
9 **bronchospasm. Those tubes spasm down.**

10 **If you have something in your lungs, like**
11 **you inhale pollen, you inhale dust, you inhale**
12 **fluid, you can get spasm, which means your**
13 **artery -- or your bronchials contract down.**

14 **Q.** Okay. Can you take a look at the
15 authority that we're looking at, page 1502.

16 **A. Okay.**

17 **Q.** And in the left-hand column, the
18 second-to-last paragraph, the last two sentences,
19 it reads, of these, miosis -- and "of these"
20 meaning signs and symptoms -- miosis may be the
21 most consistently encountered sign. Bronchorrhea
22 can be so profuse that it mimics pulmonary edema.
23 Correct?

24 **A. That's what it says.**

25 **Q.** And bronchorrhea is excessive secretions

1 from the bronchial mucosa; correct?

2 **A. Correct.**

3 **Q.** Resulting in the production of frothy
4 sputum --

5 **A. Again, yes.**

6 **Q.** -- correct?

7 Now, on the right-hand column, do you see
8 in the second-to-last paragraph this authority
9 states, the most common pulmonary complications of
10 these compounds are bronchorrhea and
11 bronchoconstriction --

12 **A. Okay.**

13 **Q.** -- correct?

14 And it goes on to explain that people die
15 from organophosphates because of the killer bees,
16 the depression of the respiratory system; correct?

17 **A. Correct.**

18 **Q.** Means it makes you stop breathing;
19 correct?

20 **A. Correct.**

21 **Q.** It isn't that you drown in your spit
22 according to this authority; correct?

23 **A. I don't think it says that. I think we**
24 **said actually the same thing. So when you're**
25 **saying this says right here -- where did you just**

1 **read from?**

2 **Second-to-last paragraph?**

3 **Q.** Yes.

4 **A. Where did you just read from?**

5 **Q.** The right-hand column, second-to-last
6 paragraph.

7 **A. Okay.**

8 **Q.** The most common pulmonary complications
9 of these compounds are bronchorrhea and
10 bronchoconstriction.

11 **A. Exactly. The most common pulmonary,**
12 **lung, complications of these compounds are**
13 **bronchorrhea and bronchoconstriction.**

14 **So you get the fluid into your lungs, and**
15 **they constrict. You can't breathe. You're**
16 **drowning in your own spit. I think they're saying**
17 **the same thing.**

18 **And I'm not saying that you can't lead to**
19 **pulmonary edema. And that's what this says here,**
20 **what you just read to me.**

21 **Bronchorrhea can be so profuse that you**
22 **get so much water into your lungs that it can mimic**
23 **pulmonary edema. You get so much water in there,**
24 **those -- those arteries where they bind up or they**
25 **go right next to the lungs, they start to die and**

1 **you leak. And it gets so bad it can be pulmonary**
2 **edema. I think we've said the same thing.**

3 **Q.** I'm not sure. The jury would -- can
4 decide that.

5 **A. Okay.**

6 **Q.** Let's make one thing clear. You're not
7 saying water is coming in; right?

8 **A. I'm saying that --**

9 **Q.** Water is coming into the lungs. It's not
10 coming in. It's that there's an excessive
11 secretion from the bronchial mucosa; correct?

12 **A. That's coming in.**

13 **Q.** Coming out?

14 **A. Well, no. It starts by coming in. You**
15 **got to get it into the lung first to get all these**
16 **problems. So you start salivating. And where**
17 **this -- if it can come out this way, great. But if**
18 **it's -- you're on your back, it goes down into your**
19 **lungs.**

20 **It's the same thing with vomiting. It's**
21 **called "aspiration" when the things that belong**
22 **outside the lungs get up into the lungs. So**
23 **saliva -- when you're sitting here -- we all**
24 **salivate. It's not going into our lungs. Right?**

25 **Q.** Is it your opinion, Doctor, that

1 bronchorrhea and bronchospasm has to do with saliva
2 which is secreted in the mouth is going into the
3 lungs and the bronchial -- is that what you're
4 saying?

5 **A. I'm saying the bronchus, same thing,**
6 **secret fluid into your lungs. A bronchus is the**
7 **tube. It's not the gas-exchanging part of the**
8 **lung.**

9 **If you look at -- think of a tree upside**
10 **down. The trunk of the tree is your mouth, the**
11 **trachea, where the air goes down. And then the air**
12 **goes in the smaller and smaller branches. And**
13 **those are the bronchus. They don't exchange gas.**
14 **They don't -- they don't have blood vessels right**
15 **next to them that are exchanging gas back and**
16 **forth.**

17 **You get all the way down to the leaves.**
18 **The leave are called "alveoli." And they're just**
19 **these little, little, paper-thin, microscopic,**
20 **little bubbles in there. And that's where the**
21 **oxygen and carbon dioxide is exchanged.**

22 **Now, if the branches of that upside down**
23 **tree -- if anywhere along that tree, whether it's**
24 **coming from the top of the tree of the trunk or all**
25 **the way down on the upside down tree in those**

1 **bronchials start secreting fluid, that's**
 2 **bronchorrhea. Then -- and that get into the**
 3 **alveoli. That's the leaves of the tree. That's**
 4 **where you start having problems.**

5 **Q. What is respiratory depression?**

6 **A. Respiratory depression is when you're not**
 7 **breathing fast enough. That can be called**
 8 **"bradypnea," which means your respiratory rate is**
 9 **slow. Normally if you're breathing 12, 16 times a**
 10 **minute, if you're a little more excited, you're**
 11 **breathing 20 times a minute. But if I'm**
 12 **respiratory depression, you start breathing slower**
 13 **and slower and slower.**

14 **Q. All right. Dr. Dickson, let me ask you**
 15 **this question, and then we're going to move on: Is**
 16 **it true that paralysis of the respiratory muscles,**
 17 **respiratory depression, in combination with the**
 18 **bronchorrhea and the bronchospasm and CNS**
 19 **depression, is what leads to death in**
 20 **organophosphate poisoning?**

21 **A. Yes. Which --**

22 **Q. First of all, is that yes or no? Do you**
 23 **agree with that?**

24 **A. I'd have to expand upon that.**

25 **Q. Go ahead.**

1 **A. Okay. So what we talked about and what**
 2 **she's -- she's nicely gone over is the different**
 3 **signs and symptoms of how the three areas we talked**
 4 **a little bit about where organophosphates or**
 5 **cholinergic works.**

6 **One is the first receptor, which is the**
 7 **muscarinic. And that's the ones that we can see**
 8 **the symptoms on. That's where they're doing all**
 9 **these things. While people are pooping, they're**
 10 **drooling, they're vomiting, guess what? I can**
 11 **watch all that happening.**

12 **Then you get to the nicotinic or the**
 13 **other effects. That's where it can get confusing**
 14 **because this says it slows the heart rate down.**
 15 **But on the other receptors it can make it go**
 16 **faster. It can make your pupils big instead of**
 17 **small.**

18 **And it can, in some cases, affect the**
 19 **nerve to your diaphragm. Your diaphragm is thing**
 20 **that helps you -- the big muscle that makes you**
 21 **breathe. It can cause paralysis or paralyze that**
 22 **muscle. So if your diaphragm stops working, you're**
 23 **not breathing anymore.**

24 **The last of the third areas where it**
 25 **works is on the brain. It can make you act goofy.**

1 **It can make you have seizures. It can make you do**
 2 **things like that, have bizarre behavior. People**
 3 **can look like they're having a stroke or things**
 4 **like that.**

5 **Q. Okay. So the last question on this**
 6 **subject is, it is your opinion that when people are**
 7 **poisoned by organophosphates. They die because**
 8 **they drown in their spit; correct?**

9 **A. That's the simplified version of it.**

10 **Q. Okay. Now, you would agree with me**
 11 **that -- I mean, you're the expert here called by**
 12 **the state. And in answering these questions, you**
 13 **want the jurors to get accurate information;**
 14 **correct?**

15 **A. Yes.**

16 **Q. So you're not going to answer a question**
 17 **to which you don't know the answer; correct?**

18 **A. I will do my best to always reference**
 19 **anything that I don't know. And I do a lot of**
 20 **that. I read a lot.**

21 **Q. Now, you would agree with me that these**
 22 **various signs and symptoms -- I think you testified**
 23 **to these yesterday. These various signs and**
 24 **symptoms don't always show up all together, meaning**
 25 **DUMBELLS, all of it; or SLUDGEM, all of it; right?**

1 **A. You showed me a piece of paper that you**
 2 **thought said that. But it actually said, the onset**
 3 **of symptoms vary according to the mode of**
 4 **inhalation. That wasn't really saying that -- that**
 5 **means the onset of something, means how quickly**
 6 **you'll start to have the symptoms.**

7 **So depending on how much you drink or how**
 8 **much you're exposed to, you'll have symptoms**
 9 **quicker. That's what you showed me yesterday.**

10 **Q. I think I showed you something else too.**
 11 **But let me ask you this, because I think you did**
 12 **tell the jury yesterday -- you can correct us --**
 13 **correct yourself if you need to. You testified**
 14 **that based upon the rate -- I'm sorry -- the route**
 15 **of exposure, the dosage, and the specific**
 16 **compounds, some of these signs and symptoms may be**
 17 **more predominant than others. Do you -- do you**
 18 **recall testifying to that first?**

19 **A. It's possible. Yes.**

20 **Q. Possible that you said that yesterday?**

21 **A. If that's what it said in the book, then**
 22 **show it to me. I'd love to see it.**

23 **Q. No, no, no, no. That's not my question,**
 24 **Doctor.**

25 **A. Oh. Okay.**

1 Q. We'll talk about what's in the book.
 2 A. Okay.
 3 Q. Did you tell this jury yesterday that
 4 based upon the route of exposure, the dosage, and
 5 the specific compound involved, some of the signs
 6 and symptoms may show up more dominant than others?
 7 A. **It's definitely possible.**
 8 Q. Definitely possible you testified to that
 9 yesterday?
 10 A. **Definitely possible that I testified to**
 11 **that yesterday.**
 12 Q. Okay. So let me ask you the question
 13 again.
 14 A. Okay.
 15 Q. Do you know whether or not any one of
 16 these signs and symptoms may show up less or more
 17 based upon the route of exposure, the dosage, and
 18 the specific compound?
 19 A. **So do I know based on if it's a compound**
 20 **how it's going to present with -- whether it's**
 21 **going to be these symptoms or the other symptoms?**
 22 **Do I know what they're going to do? No. I can't**
 23 **tell you by if you name a gas, name an**
 24 **organophosphate, and if it was inhaled versus if**
 25 **somebody drank a bunch, how they're going to**

1 **present. I can't tell you that.**
 2 Q. I'm not asking you to explain to the jury
 3 which sign or symptom will show up or which will
 4 show up less or more. I'm just asking you a very
 5 general principle --
 6 A. Okay.
 7 Q. -- which I asked you yesterday.
 8 Do you know whether or not generally,
 9 based upon the route of exposure, meaning either
 10 inhale, ingestion, or absorption through the
 11 skin --
 12 A. Okay.
 13 Q. -- plus the specific compounds involved,
 14 plus the dosage -- do you know generally whether or
 15 not that will affect whether or not you see miosis
 16 and bronchorrhea more than you might see
 17 salivation?
 18 A. **So -- no. I guess I wouldn't tell you if**
 19 **it happened what -- I don't know if I'm answer --**
 20 **asking -- understanding your question correctly.**
 21 **Do I know what will happen with these?**
 22 Q. I'll try it again, Dr. Dickson.
 23 A. Please.
 24 Q. I'm asking a very simple question about a
 25 general principle.

1 A. Okay.
 2 Q. Okay?
 3 The jury now knows that there are various
 4 signs and symptoms that you will see under this
 5 toxidrome; correct?
 6 A. Okay. Yes.
 7 Q. My question is, and I want you to help
 8 them understand, are you always going to see
 9 diarrhea, urination, miosis, bronchorrhea,
 10 bronchospasm, emesis, lacrimation, and salivation
 11 every time you have organophosphate poisoning?
 12 A. No.
 13 Q. You won't because it depends on those
 14 three variable factors; right? It depends on the
 15 specific compound involved; correct?
 16 A. **Yes. Different compounds are going to**
 17 **have different effects.**
 18 Q. You know that; correct?
 19 A. Correct.
 20 Q. And it depends on the rate -- I'm
 21 sorry -- the route of exposure; correct?
 22 A. Correct.
 23 Q. Whether it's through inhalation,
 24 ingestion, or through the skin --
 25 A. Correct.

1 Q. -- correct?
 2 You know that?
 3 A. Correct.
 4 Q. And it also depends on the dosage, how
 5 much?
 6 A. **Right. You take more, you're going to**
 7 **get sicker quicker.**
 8 Q. And you know that; correct?
 9 A. Correct.
 10 Q. Do you remember me asking you those
 11 specific questions only two days ago?
 12 A. **I'm sure you did.**
 13 Q. Do you remember me asking you -- and this
 14 is from our interview on the 9th. What I'm asking,
 15 Dr. Dickson, is somebody who has OP poisoning may
 16 show excessive salivation but not necessarily
 17 emesis, or sometimes they show emesis and not
 18 necessarily lacrimation? And your answer was,
 19 correct.
 20 Do you remember that?
 21 A. **It's definitely possible.**
 22 Q. And then I asked you, and do you know if
 23 that depends on the route of exposure?
 24 Do you remember your answer?
 25 A. No.

1 MR. HUGHES: Objection, Your Honor. May we
2 have a copy of this?

3 THE COURT: Yes.

4 MS. DO: I'm sorry. I just have this one. I
5 don't have an extra copy.

6 THE WITNESS: Actually, I do. You asked if it
7 would depend on how much, and I said, yeah. The
8 more -- I think I said the more you take, the
9 faster the symptoms are going to happen. And you
10 said that was obvious.

11 Q. BY MS. DO: Well, let me show you the
12 transcript that Mr. Hughes has now reviewed. I
13 asked you, do you know if that depends on the route
14 of exposure?

15 And your answer was?

16 A. **I don't know, it says.**

17 Q. Well, you don't disagree with me that
18 that's what you said; right?

19 A. **If that's what was recorded, that's what
20 I said.**

21 Q. So -- and do you know if that depends on
22 the route of exposure? Your answer?

23 A. **It says, I don't know.**

24 Q. Okay. Do you know if that depends on the
25 compound? And your answer?

1 A. **It's, I don't know.**

2 Q. And my question, what about on the
3 dosage? Your answer?

4 A. **I don't know.**

5 Q. That was just two days ago that you
6 didn't know the answers to the same questions I'm
7 asking you today for which you do have an answer;
8 correct?

9 A. **Well, that's where it comes into what was
10 the question you're asking. That's why I was kind
11 of confused. If you're asking me if I know what
12 medication or what drug specifically and which ones
13 are going to show up.**

14 Q. Do you feel that the questions I asked
15 you about, if somebody has OP poisoning, may show
16 excessive salivation but not necessarily emesis, or
17 sometimes they show emesis and not necessarily
18 lacrimation -- was that vague do you?

19 A. **Well, I'm learning through my experience
20 here to listen very carefully to the questions and
21 clarify them. So --**

22 Q. So was it vague to you when I asked you
23 two days ago?

24 A. **I think so. Yes.**

25 Q. And was it vague to you when I asked you,

1 and do you know if that's -- and you answered,
2 correct. It was vague to you two days ago when I
3 asked, and do you know if that depends on the route
4 of exposure?

5 A. **If I know if depends -- well, now we've
6 defined what you're asking.**

7 Q. My question is, two days ago when I asked
8 you that question, do you know if -- meaning what
9 signs and symptoms show up -- if that depends on
10 the route of exposure? Was that vague to you two
11 days ago?

12 A. **Well, yes. Because thinking that if it's
13 the route of exposure is going to give you which
14 one of these, I can't answer you that.**

15 Q. Okay. So you're not overreaching here.
16 You're not giving the jurors answers to which
17 you're not certain about; correct?

18 A. **Correct. I mean, I can only give you
19 what the literature gives you. That's what I know.**

20 Q. Now, you told this jury that the test for
21 organophosphates is like a flip of a coin; correct?

22 A. **That's what my readings have shown.**

23 Q. Well, Doctor, you told the jury that you
24 work in the ER and you've seen ten cases of
25 organophosphate exposure; correct?

1 A. **Yes.**

2 Q. And you told the jury -- and I think that
3 it was inferred that your testimony is not just
4 based on literature reading. It's based on your
5 experience as a doctor; correct?

6 A. **Yes.**

7 Q. So based on your experience as a doctor,
8 is it your testimony to this jury that the test for
9 organophosphates is like a flip of a coin?

10 A. **I have no basis on experience because
11 I've never run that test. My only basis is on that
12 reading. We don't have that test available. I
13 don't know.**

14 Q. So you've never run any of these tests?

15 A. **Acetylcholinesterase activity test, no.**

16 Q. I'm going to ask you about which tests
17 are available. But is it your testimony that
18 you've never run a test for organophosphates?

19 A. **I've never run a blood test for
20 organophosphates.**

21 Q. Okay. Now, so when you told the jury
22 it's like a flip of a coin, what did you base that
23 on?

24 A. **Based on the readings in eMedicine.**

25 Q. Okay. Do you have that article?

1 A. I do.
 2 Q. And does it indicate in there that it's a
 3 flip of a coin?
 4 A. Should I read it to you?
 5 Q. Sure.
 6 A. Okay.
 7 Q. And this, again, is eMedicine; correct?
 8 A. Correct. You guys ready? Okay.
 9 Laboratory studies on organophosphate
 10 toxicity workup. Organophosphate toxicity is a
 11 clinical diagnosis. That's what I represented to
 12 you many, many times yesterday. It's based on
 13 seeing the patient.
 14 Confirmation of organophosphate poisoning
 15 is based on the measurement of cholinesterase
 16 activity. That's that enzyme that breaks it down.
 17 These results are not readily available.
 18 Although, red blood cell and plasma,
 19 pseudocholinesterase levels can be used -- can both
 20 be used. Red blood cell cholinesterase correlates
 21 better with CNS. Acetylcholinesterase activity is,
 22 therefore, a more useful marker of organophosphate
 23 poisoning.
 24 If possible, draw blood for the
 25 measurements of red blood cell and plasma

1 cholinesterase activities levels prior to treatment
 2 with 2-PAM. That's the antidote for it. Monitor
 3 levels serially can be used to determine a response
 4 to therapy.
 5 So what that means a --
 6 Q. I'm sorry. I think you read that wrong.
 7 Monitoring serial levels; correct?
 8 A. I'm sorry. Monitoring serial levels can
 9 be used to determine a response to therapy.
 10 So if you're having -- you're measuring
 11 the activity --
 12 Do you mind if I flip that back?
 13 Q. Sure.
 14 A. So what the test in theory does is
 15 this -- this enzyme that, basically -- you're
 16 producing the acetylcholine. You're breaking it
 17 down. You're producing. You're breaking it down.
 18 The organophosphates, again, bind to that
 19 and prevent it from working. You get a buildup, a
 20 buildup, a buildup. And it makes sense. Let's see
 21 if this thing is working or not. If it's not
 22 working, well, then that probably means there's
 23 organophosphates.
 24 What they say is, let's measure it now.
 25 Let's measure it tomorrow and then the day after.

1 And if this therapy working, the activity should
 2 increase and increase and increase. If the -- it's
 3 not working, the activity should stay the same.
 4 Does that make sense? You fix the
 5 problem.
 6 So it says, red blood cell
 7 acetylcholinesterase represents the
 8 acetylcholinesterase found on red blood cell
 9 membranes.
 10 Q. Doctor, if you don't mind, let me just
 11 ask you this rather than reading through this
 12 entire page.
 13 Anywhere on this page that you're reading
 14 from, does it say that testing for organophosphates
 15 under this standard is a flip of a coin? Does it
 16 say that?
 17 A. Nobody uses the term "flip of the
 18 coin" --
 19 Q. Does it say --
 20 A. -- in medical literature.
 21 Q. Does it say in here that it's unreliable
 22 to a degree of 50/50?
 23 A. Would you like me to read to them what it
 24 is?
 25 Q. I'm asking you, does it say it's

1 unreliable to a degree of 50/50?
 2 A. It does not.
 3 Q. Okay. Rather than using eMedicine, why
 4 don't we look at the medical textbooks, which have
 5 been marked 1015. For example, this is the
 6 Occupational Medicine dealing with human health
 7 effects of pesticide; correct?
 8 A. That's what it says.
 9 Q. And I'm going to refer you -- excuse me.
 10 Let me take that back.
 11 We're going to look at the Goldfrank's
 12 Toxicologic Emergencies.
 13 A. When was Goldfrank's published?
 14 Q. I don't have this edition. It's the
 15 eighth edition. I can find it for you.
 16 But let me ask you this.
 17 A. Just so you know, this was updated on
 18 March 16th, 2010, the one that I'm reading from.
 19 Q. Understood. It's an eMedicine article;
 20 correct?
 21 A. Correct.
 22 Q. Looking at this textbook, which looks
 23 like the edition is 2006.
 24 A. Okay.
 25 Q. Under diagnostic testing, do you see the

1 first sentence? Can you read that for the jury?

2 **A. Well, I'd like to read the whole thing if**

3 **you'd like me to.**

4 **Q.** If you don't mind, let me ask the

5 question, and then you can read the whole thing.

6 **A. Okay. So you want me to read this?**

7 **Q.** The first sentence.

8 **A. The most reliable and appropriate**

9 **laboratory test for confirming cholinesterase**

10 **inhibition by insecticide is a test that measures**

11 **specific insecticides and active metabolites in**

12 **biologic tissue.**

13 **Q.** And then it goes on to say that such

14 testing is rarely attainable within few minutes or

15 an hour. Correct?

16 **A. Unfortunately, urine -- although urine**

17 **and serum assays for organophosphorus compounds and**

18 **their metabolites are being investigated, such**

19 **testing is rarely --**

20 **So this is investigational? Is that what**

21 **it's saying.**

22 **Q.** Rarely attainable.

23 **A. Such testing is rarely attainable within**

24 **a few minutes or hours.**

25 **Q.** Let me stop you there.

1 MR. HUGHES: Your Honor. Pursuant to 106, I

2 think the next sentence is very important to the

3 context.

4 THE COURT: You may read the next sentence.

5 THE WITNESS: Moreover, normal ranges and

6 toxic levels are not established for most

7 compounds.

8 **Q.** BY MS. DO: Go ahead and continue

9 reading.

10 **A. Another useful research tool -- so we're**

11 **talking about research tools -- is the measurement**

12 **of acetylcholinesterase activity in neuronal**

13 **tissue. But this requires central nervous system**

14 **or neuronal tissue biopsy. So you have to take a**

15 **chunk of their brain to get that test.**

16 **Even this test is not very helpful unless**

17 **the baseline activity is noted.**

18 **So what that means is --**

19 **Q.** Known.

20 **A. What?**

21 **Q.** It says, known.

22 **A. Is known. Sorry.**

23 **Q.** Just read the last paragraph, and

24 we'll -- we'll talk about it. The last sentence in

25 the paragraph.

1 **A. Currently the only practical diagnostic**

2 **study for verifying cholinesterase inhibitory**

3 **poisoning is a measurement of cholinesterase**

4 **activity in readily accessible tissue, such as**

5 **plasma and erythrocytes, which are the red blood**

6 **cells. That's what we were just reading.**

7 **Q.** Okay. Now, after reading that -- and now

8 I'm going to give you -- I think you want to

9 provide an explanation. What I'm asking is when

10 you told this jury yesterday that it's unreliable

11 to a flip of a coin, that tells a layperson, who's

12 not an expert, that it's a 50/50 reliability test;

13 correct?

14 **A. Correct.**

15 **Q.** Okay. You just pulled that number out of

16 the air -- right? -- because it's not in your

17 eMedicine article and it's not in the medical

18 textbooks; correct?

19 **A. Would you like me to read why I said**

20 **that?**

21 **Q.** I'd like you to answer the question

22 first.

23 **A. I can't answer that question.**

24 **Q.** Did that number come from -- the 50/50

25 flip of a coin -- did that come from a book or an

1 article?

2 **A. That specific quote was my representation**

3 **of what it says right here.**

4 **Q.** So you interpreted what you have in your

5 eMedicine article to mean 50/50; is that right?

6 **A. It's a -- as you said, a spirit of the**

7 **reliability of the test.**

8 **Q.** I don't remember using the word "spirit."

9 I --

10 **A. Maybe I used it.**

11 **Q.** I'm asking you, Doctor --

12 **A. Yeah.**

13 **Q.** -- is it your interpretation of the

14 eMedicine article that this test for cholinesterase

15 activity is 50/50?

16 **A. My interpretation is this is that it's**

17 **not useful.**

18 **Q.** Which you then extrapolated to 50/50?

19 **A. Correct.**

20 **Q.** Okay. I just want the jurors to

21 understand. Because when you quote numbers or

22 statistics, it gives the impression that it comes

23 from a reliable source. If it's your

24 interpretation, then I'd ask you to explain that.

25 Okay?

1 A. I'd love to explain it if you'd give me
2 the opportunity.

3 Q. Go ahead.

4 A. Can I read this to you now? Is that
5 okay?

6 Q. Sure.

7 A. Okay. Cholinesterase levels, so that
8 level, do not always correlate with clinical
9 illness. So that level when we test doesn't mean
10 that if it's low, they're sick, high, they're not
11 sick. It doesn't correlate. Okay?

12 The level of cholinesterase activity --
13 so how much that thing is working -- is relative
14 and is based on population estimates. So estimate
15 this group will have so much activity. This group
16 will have a different activity.

17 Neonates, that's newborn and infants,
18 have a baseline level that are lower than adults.

19 Because most people do not know their
20 baseline levels, the diagnosis can't be confirmed
21 by observing a progressive increase in
22 cholinesterase value until their values have
23 plateaued over time.

24 So what that means is that's when you
25 have somebody and you are going to use this test,

1 you don't know when you first do it -- a single
2 point isn't going to help you because you don't
3 know what their baseline is.

4 But is it getting better and better and
5 better? Well, then you can say, hey. We're
6 heading in the right direction. If it's staying
7 the same or getting worse, then we're probably not
8 heading in the right direction.

9 Falsely depressed levels of red blood
10 cell cholinesterase can be found in -- so these are
11 the falsely depressed levels. Because when we're
12 thinking someone has had organophosphate poisoning,
13 their level is going to be low. But they can be
14 low in people with pernicious anemia,
15 hemoglobinopathies, use of antimalarial drugs, and
16 oxalate blood tubes. So these are other things
17 that can cause the level to be low.

18 Falsely depressed levels of plasma
19 cholinesterase activity -- so we're comparing this
20 activity of this enzyme in red blood cells versus
21 in just the blood itself, the plasma.

22 Falsely depressed levels of plasma
23 cholinesterase are observed in liver dysfunction,
24 so people who have liver problems; low protein
25 conditions, people that don't have maybe the best

1 diet or are sick in the first place; neoplasm,
2 cancer; hypersensitivity reactions, if you're
3 allergic. If you have an allergic reaction, it can
4 affect it.

5 Certain drugs can cause it.

6 Succinylcholine. That's the drug that they
7 sometimes use to put people to sleep when they put
8 them on the ventilator. Codeine. It's a pain
9 medicine. Morphine. Pregnancy can cause falsely
10 depressed levels. And genetic deficiency, so
11 problems in genetics.

12 So -- and then they talked about other
13 laboratory findings. But this is the -- the reason
14 where I came up with the 50/50 is there's a lot of
15 things that can mess up this test.

16 So as your physician, do you want me to
17 hang my hat on the diagnosis based on this test?
18 That's the question. I'm not hanging my hat on my
19 mom or my dad or my children's therapy based on
20 this test. So it's not a test I would use.

21 Q. Thank you, Dr. Dickson. I understand
22 that.

23 Again, when you're in the emergency room,
24 you need to treat the patient right away. And
25 sometimes these tests are not available within

1 minutes or hours; correct?

2 A. If at all.

3 Q. If at all. Understand.

4 And you're telling the jury you've never
5 run the test yourself; correct?

6 A. Correct.

7 Q. Do you know whether other doctors have
8 run this test?

9 A. Obviously somebody has.

10 Q. Correct? Right? Because it's there?

11 A. Yeah.

12 Q. Now, Dr. Cutshall testified that if he
13 had an inkling of -- well, let me take that back.

14 If Dr. Mosley testified that if he had an
15 idea or evidence presented to him that possible
16 organophosphate poisoning was involved, that he
17 would have asked for fresh blood samples not only
18 from Liz Neuman but all the participants.

19 Okay?

20 A. Okay.

21 Q. And that would be because he wants to
22 test the samples; correct?

23 A. Okay.

24 Q. Is that right? Would you agree with
25 that?

1 **A. I assume that's why he wants them.**

2 **Q.** All right. And do you know whether or
3 not medical examiners, when they have evidence
4 presented to them of organophosphate poisoning,
5 will ask for fresh samples to be preserved
6 specifically to test for cholinesterase activity?

7 **A. I do not know if that's the case.**

8 **Q.** And that's because your not a forensic
9 pathologist; correct?

10 **A. I'm not.**

11 **Q.** You're not somebody who is trained and
12 educated specifically involved in a case to
13 determine the cause of death in a criminal matter;
14 correct?

15 **A. Say that again?**

16 **Q.** Well, you're not a forensic pathologist;
17 correct?

18 **A. No, I'm not.**

19 **Q.** Which -- which means it's usually in the
20 province -- it actually is always in the province
21 of medical examiners, such as Dr. Mosley or
22 Dr. Lyon, to determine cause of death; correct?

23 **A. Well, I think they take into account more**
24 **than just that. They look into the medical**
25 **record --**

1 **Q.** That's not my question.

2 **A. Oh. I'm sorry.**

3 **Q.** The question is, it's in the province of
4 medical examiner under Arizona law specifically;
5 right?

6 **A. I don't know if that's the law or not.**

7 **Q.** Okay. Now, are you telling the jury that
8 this is the only test for organophosphates?

9 **A. Well, according to --**

10 **Q.** I'd like you to try and answer without
11 reading first. Do you know whether or not there
12 are any other tests?

13 **A. I read for all these things. And that's**
14 **my only way of knowing.**

15 **Q.** Okay.

16 **A. I would have to read to look if there are**
17 **other tests.**

18 **Q.** Well, let's try this first. You've done
19 ten cases of organophosphates; correct?

20 **A. Yes.**

21 **Q.** And so I assume that before treating
22 patients for organophosphate poisoning, you have a
23 wealth of information and knowledge from medical
24 school; correct?

25 **A. Yes.**

1 **Q.** About -- right?

2 **A. Well, it's a good question. So when we**
3 **talk about organophosphates, it's not something**
4 **that everybody sees a lot of. And it's something**
5 **that I look this thing up whenever I suspect it.**
6 **I've got to read it again and again and again.**

7 **We have a program that -- I do it**
8 **selfishly to keep me learning -- is we have a tox**
9 **medic program in our community. We treat -- have**
10 **special training for our medics to deal with**
11 **toxicologic emergencies. And every year we sit**
12 **down, go over all the toxidromes to remind us**
13 **because it's something difficult to remember every**
14 **single time. If you don't see it every day, you're**
15 **not always going to remember all the specifics**
16 **about it.**

17 **Q.** Do you believe that's true for all
18 doctors, that in order to remember the various
19 disorders and signs and symptoms, you always have
20 to go back to the literature and read from it?

21 **A. I always try to read as much as possible.**
22 **And that's part of our board certification. We're**
23 **required to do -- they actually have these**
24 **articles. It's called the "lifelong learning and**
25 **self-assessment." Every year they come out with**

1 **10, 15 articles that we are required to read to**
2 **maintain our board certification. And then we're**
3 **tested on it. So continued learning is an integral**
4 **part of being an up-to-date doc.**

5 **Q.** I understand what you're saying.

6 **A. Okay.**

7 **Q.** But from the witness stand the last two
8 days, when you're asked questions about heat
9 illness or organophosphates, you've had to rely, on
10 the witness stand, on your literature; correct?

11 **A. Yes. Absolutely.**

12 **Q.** You've had to go back and read -- and
13 literally you did just read from that article to
14 the jury; correct?

15 **A. Absolutely.**

16 **Q.** Okay. And what I'm asking you, for
17 example, Dr. Cutshall, when he testified to the
18 jury, didn't do that. Do all doctors do what you
19 do?

20 **A. I can't tell you. I would recommend that**
21 **they do because I definitely don't want to get**
22 **misquoted. And my information comes from the**
23 **literature. It's not -- we talked about this**
24 **yesterday.**

25 **I try to make all the things I do**

1 **evidence based. If you look at medicine through**
 2 **the years, there's a new process called**
 3 **"evidence-based medicine." When you saw your**
 4 **doctor a hundred years ago or 50 years ago, they**
 5 **based it on what their evidence was, and maybe they**
 6 **only had 20 patients or 30 patients. But now**
 7 **there's great research out there where they can**
 8 **look at a thousand, a hundred thousand, a million**
 9 **patients.**

10 **One of the examples are -- you know --**
 11 **they used to give hormone replacement therapy to**
 12 **all women. They all got hormone replacement**
 13 **therapy for years and years and years. And they**
 14 **started doing studies --**

15 **Q.** I'm sorry. Let me just stop you there
 16 because we're going off into an area that might not
 17 be relevant to the jury.

18 What I'm asking you -- and then we're
 19 going to move on. Okay?

20 It's clear from what the jury can see is
 21 that anytime you are asked a question -- or most of
 22 the times when you were asked a question about
 23 organophosphates or even heat illnesses, you have
 24 had to rely from the witness stand on what you have
 25 in front of you; correct?

1 **A.** I probably rely on organophosphates more
 2 because I see this -- reading from it more because
 3 I see it less frequently. The heat illness I see a
 4 lot more frequently, and I teach on it more
 5 frequently. So I rely less to on having to read
 6 it.

7 **Q.** Could it be that you're relying on it
 8 because it simply is not an area of expertise for
 9 you?

10 **A.** No.

11 **Q.** All right. Now, my question -- and
 12 without reading, Dr. Dickson -- is we've talked
 13 about the blood testing for cholinesterase
 14 activity; correct?

15 **A.** Correct.

16 **Q.** Do you know of any other tests where you
 17 can determine whether or not someone has been
 18 exposed to organophosphates? Is that yes or no?

19 **A.** Do I know of any other tests that
 20 specifically designed -- well, the one we just read
 21 from your paper talked about there's actually ones
 22 in research for specific ones --

23 **Q.** Again, something you read from what I
 24 just showed you. I'm asking from your own personal
 25 knowledge, your independent knowledge, do you know

1 of any other tests for organophosphate exposure?

2 **A.** All my knowledge comes from work or
 3 experience or reading. So it's kind of an
 4 interesting question.

5 **Q.** I understand that, Doctor. And you're
 6 coming in with 11 years of experience?

7 **A.** Correct.

8 **Q.** Based upon those 11 years of experience,
 9 I'm asking you, do you know whether or not there is
 10 another test for organophosphates?

11 **A.** The two tests I know of are the ones that
 12 we've discussed here and discussed there.

13 **Q.** Let me show you an exhibit. It's been
 14 marked as 1001. Do you see an email here dated
 15 March 3rd, 2011?

16 **A.** Correct.

17 **Q.** And do you see Dr. Fischione?

18 **A.** Uh-huh.

19 **Q.** Do you know who he is?

20 **A.** I don't.

21 **Q.** Dr. Lyon. You know who he is; right?

22 **A.** Uh-huh.

23 **Q.** And Dr. Mosley?

24 **A.** Uh-huh.

25 **Q.** You know who he is?

1 **A.** Correct.

2 **Q.** And Dr. Dickson, that's you.

3 **A.** Yes.

4 **Q.** And the email is dated importance is
 5 high; correct?

6 **A.** Correct.

7 **Q.** And attached to the email is a letter
 8 dated March 2nd, 2011; correct?

9 **A.** Correct.

10 **Q.** Hand delivered to Luis Li?

11 **A.** Correct.

12 **Q.** And you've met Mr. Li? He's sitting over
 13 there.

14 **A.** Yep.

15 **Q.** And this was signed by Mr. Hughes, the
 16 prosecutor; correct?

17 **A.** Correct.

18 **Q.** And this informed you -- you got this
 19 letter along with the other medical examiners --
 20 the medical examiners on March 2nd informing you
 21 that the state had conducted a test for
 22 organophosphates; correct?

23 **A.** Correct.

24 **Q.** And it says here, the state wants to
 25 apprise you of information we recently learned

1 regarding the recent testing of blood samples for
2 organophosphates. The state has been informed by a
3 lab employee, Mr. -- or Dr. Bloom, that the
4 organophosphate test results may not be significant
5 due to the passage of time between when the blood
6 was drawn and the time Dr. Bloom's lab tested the
7 samples.

8 Bloom also indicated that the results of
9 the test could be affected by the way the blood
10 samples were stored, either frozen or refrigerated.

11 Correct?

12 **A. Correct.**

13 **Q.** So you were told by the state that there
14 was a test for organophosphates that was done in
15 this case; correct?

16 **A. Yes, I was.**

17 **Q.** And based upon receiving that
18 information, you do know that there is another way
19 to test for the exposure of organophosphates;
20 correct?

21 **A. I don't -- doesn't say anything here**
22 **about what the test was. It just says that it's**
23 **not a reliable test.**

24 **Q.** I understand that. The state also
25 forwarded you a copy of the results themselves;

1 right?

2 **A. Correct.**

3 **Q.** And you know that that was a test that
4 was done by a forensic lab in Indiana -- I'm sorry.
5 Indiana then to West Virginia, called "NMS Labs";
6 correct?

7 **A. I don't know that. I'll take your word**
8 **for it.**

9 **Q.** Okay. So in addition to what can be done
10 in the emergency room, there is also another test
11 that is done by medical examiners looking for the
12 cause of death in a forensic setting; right?

13 **A. Yes.**

14 **Q.** Now, when you told the jury generally
15 that the test for organophosphates is a flip of a
16 coin, did you mean to also tell the jury that
17 testing organophosphate compounds in a forensic
18 setting -- in a forensic setting is a flip of a
19 coin?

20 **A. I have no idea what the forensic setting**
21 **of organophosphate tests are.**

22 **Q.** Okay. And -- so that's beyond your
23 expertise and knowledge; right?

24 **A. Yes.**

25 **Q.** So if there was evidence presented to the

1 doctors or to the medical examiner on the night of
2 the 8th or even on the 9th and they had retained
3 fresh blood samples and submitted that to a
4 forensic lab for testing of organic compounds, that
5 is a reliable test, to your knowledge; correct?

6 **A. So you're saying that there -- I don't**
7 **know anything about the test, so I can't say it's a**
8 **reliable test.**

9 **Q.** Okay. So you don't know one way or the
10 other?

11 **A. Well, according to this, it says it's not**
12 **reliable.**

13 **Q.** Due to the passage of time?

14 **A. Correct.**

15 **Q.** And that was tested some 17 months later;
16 right?

17 **A. Correct.**

18 **Q.** So my question -- and I'm sorry if you
19 didn't hear. My question is this: If the medical
20 examiners and the doctors had been presented with
21 evidence that organophosphates may be an issue,
22 they would have taken the fresh samples and
23 submitted it in a forensic testing -- forensic
24 setting -- I'm sorry -- to test for organic
25 compounds, do you know whether or not that can be

1 done?

2 **A. Well, you're telling me yes.**

3 **Q.** Okay. And do you know whether or not
4 that test is reliable?

5 **A. I do not know.**

6 **Q.** Okay. Now, you talked about yesterday
7 whether or not the -- you talked about the symptoms
8 of organophosphates being -- and I think that your
9 words were minimal. Do you remember that?

10 The symptoms of organophosphate cases
11 have been minimal because the stuff you buy at Home
12 Depot don't have high concentration of
13 organophosphates.

14 Do you remember saying that?

15 **A. Yes.**

16 **Q.** How do you know that?

17 **A. Well, actually, it's in this article.**

18 **Q.** In which article?

19 **A. The eMedicine article.**

20 **Q.** Okay. Let's put the eMedicine aside.
21 How do you know that?

22 **A. Because I read the eMedicine article.**

23 **Q.** Just the one you printed up about eight
24 days ago?

25 **A. Correct.**

1 Q. Now, my question is -- because you told
 2 Mr. Hughes that you had in your 11 years treated
 3 ten patients with organophosphate exposure; right?
 4 A. Correct.
 5 Q. And you told him based upon your personal
 6 experience, you had observed that the signs and
 7 symptoms of organophosphates were minimal --
 8 A. Correct.
 9 Q. -- right?
 10 So not based on the eMedicine. Based on
 11 the your experience; right?
 12 A. My experience of seeing -- the ones that
 13 I've seen have been minimal symptoms.
 14 Q. All right. And then you told Mr. Hughes
 15 it's minimal because the stuff you buy at Home
 16 Depot don't have high concentrations of
 17 organophosphates; right?
 18 A. Correct.
 19 Q. And you're basing that -- that part on
 20 the eMedicine?
 21 A. Correct.
 22 Q. Have you ever gone to Home Depot to look
 23 at --
 24 A. Many, many times.
 25 Q. -- at pesticides?

1 A. Yes.
 2 Q. Have you ever seen Ortho ant killer?
 3 A. Yes.
 4 Q. Do you know what's in Ortho ant killer?
 5 A. I don't off the top of my head.
 6 Q. Do you know if it contains
 7 organophosphates?
 8 A. I don't know off the top of my head.
 9 Q. Do you know if acetate is an
 10 organophosphate?
 11 A. I don't know off the top of my head.
 12 Q. Do you know whether or not Ortho ant
 13 killer -- and ants are a problem in Arizona; right?
 14 Fire ants?
 15 A. Well, got lots of them in my backyard.
 16 Yes, I do.
 17 Q. Ortho ant killer. Do you know whether or
 18 not it contains acetate, which is an
 19 organophosphate, up to 50 percent of the product is
 20 organophosphate?
 21 A. I couldn't tell you what was in -- what
 22 chemical was in any chemical in Home Depot.
 23 Q. Okay. And you talked to the jury a lot
 24 yesterday about lethal dose, LD. Do you remember
 25 that?

1 A. Yes.
 2 Q. You told them about the lethal dose of
 3 2-ethyl-1-hexonal?
 4 A. Correct.
 5 Q. Which we all now understand is an
 6 inactive ingredient, so no one would expect that to
 7 be toxic; right?
 8 A. Correct.
 9 Q. But you also know from the EPA that it is
 10 a possible marker for pesticides because it's used
 11 in the manufacturing of pesticides; right?
 12 A. I thought it was used in -- that's --
 13 that's what you said. I'd have to read what you
 14 said again.
 15 Q. Well, the jury has it. It's an exhibit
 16 now.
 17 A. Okay.
 18 Q. Do you remember that, though?
 19 A. I remember discussing it. Yes.
 20 Q. Okay. But you didn't mention to the jury
 21 any LDs for organophosphates; right?
 22 A. I have to look them up. Don't know them.
 23 Q. You don't know them; correct?
 24 A. No.
 25 Q. And I've gone through that stack that you

1 provided me and I didn't see it in there. Right?
 2 A. I don't know them.
 3 Q. But you don't know what the lethal dose
 4 is for organophosphates?
 5 A. Have to look it up.
 6 Q. Right. And so when you told the jurors
 7 that what you've seen in organophosphate cases is
 8 minimal, that doesn't mean that there aren't cases
 9 where it has been severe enough that people have
 10 died?
 11 A. No. It definitely doesn't mean that.
 12 Q. Okay. Now, some of the other questions
 13 that Mr. Hughes has asked of other witnesses, I
 14 think, who have or have not treated
 15 organophosphates, suggest that death may not occur
 16 frequently. Do you know whether or not mass
 17 poisoning still occur today with organophosphates?
 18 A. From my readings, the problems where you
 19 see it mostly are in third-world countries where
 20 these higher concentrations of the organophosphates
 21 are present. And they're available through Central
 22 America -- talks about it in this article. That's
 23 where you see the bigger cases.
 24 And the other kind of place we see it is
 25 in these terrorist attacks. And that's where --

1 **the potential is there.**

2 **Q.** And when you say "the article," you're
3 referring again to eMedicine; right?

4 **A. Yes.**

5 **Q.** Well, in that eMedicine article,
6 Dr. Dickson, didn't it state that in the
7 United States, the American Association of Poison
8 Control Centers receive 96,307 calls related to
9 pesticide exposure, many of which involved
10 organophosphate agents and 80 uses of 2-PAM?

11 **A. Yes. That's what it says.**

12 **Q.** All right. And in that article that I
13 gave you, the Goldfrank article, if you would look
14 at page 1498. Take a look at this paragraph
15 starting with, during the five year.

16 During the five-year period of 1998 to
17 2002, the American Association of Poison Control
18 Centers recorded more than 55,000 exposures to
19 organic phosphorus compounds and more than 25,000
20 exposures to carbonates. The number of fatalities
21 averaged about eight per year. These insecticides
22 still rank as the most frequent lethal insecticides
23 in use in the United States and among the most
24 lethal poisonings.

25 Correct?

1 **A. That's what it says.**

2 **Q.** And then it goes on to say that direct
3 dermal contact with certain types of these
4 insecticides may be rapidly poisonous; correct?

5 **A. Lost you there. But yes.**

6 **Q.** So while you may not have seen in your 11
7 years, you're not telling the jury that it doesn't
8 occur; correct?

9 **A. No, I'm not.**

10 **Q.** Because, in fact, it does; correct?

11 **A. Correct.**

12 **Q.** Now, you had also told the jury yesterday
13 that the signs and symptoms of organophosphates are
14 very similar to the signs and symptoms of heat
15 stroke.

16 Do you remember that?

17 **A. There can be overlap in their
18 presentation.**

19 **Q.** I'm sorry?

20 **A. There can be overlap in their
21 presentation.**

22 **Q.** All right. And we went through this
23 chart with Dr. Cutshall, so I'm going to ask you
24 the same questions.

25 You would agree that there are

1 overlapping signs and symptoms; right?

2 **A. Yes.**

3 **Q.** And some of the overlapping symptoms
4 start with -- and let me back up a little bit.

5 We've heard from many witnesses, and I
6 think you testified to yesterday, that heat
7 illnesses exist on a continuum. Right?

8 **A. Yes.**

9 **Q.** And on the mild end you have heat
10 exhaustion; right?

11 **A. Correct.**

12 **Q.** And heat exhaustion is caused by volume
13 depletion and dehydration; correct?

14 **A. Heat exhaustion is not necessarily caused
15 by volume depletion and dehydration. Heat
16 exhaustion is made worse by volume depletion and
17 dehydration. And it can cause volume depletion and
18 dehydration.**

19 **Q.** So if Dr. Cutshall, the ICU doctor who
20 treated Neuman, testified that heat exhaustion is
21 caused by volume depletion and dehydration, you
22 would disagree with him?

23 **A. They can happen together. But they don't
24 have -- it makes sense. If it's really hot, you
25 sweat. But -- you know -- you can be well**

1 **hydrated. We talked about the cases of people in
2 Yuma who drink tons and tons of water. They're
3 well hydrated. But it's 120 outside or 115.
4 They're getting heat exhaustion even though they're
5 well hydrated. So they're not mutually exclusive.**

6 **Q.** My question is, if Dr. Cutshall testified
7 that heat exhaustion is caused by -- not that you
8 can -- but it's caused by volume depletion and
9 dehydration, do you agree or disagree with that?

10 **A. I would have to disagree.**

11 **Q.** All right. Now, under heat exhaustion
12 you can see fatigue and weakness; correct?

13 **A. Correct.**

14 **Q.** You can also see that under
15 organophosphate poisoning?

16 **A. Correct.**

17 **Q.** You can see malaise?

18 **A. Correct.**

19 **Q.** And malaise is?

20 **A. Just feeling weak, like you've got the
21 flu, virus. You just don't feel good.**

22 **Q.** And you can see that under
23 organophosphate poisoning --

24 **A. Correct.**

25 **Q.** -- right?

1 Nausea, vomiting, and abdominal cramps.
 2 You see that in heat exhaustion?
 3 **A. Correct.**
 4 **Q.** Also under organophosphate poisoning?
 5 **A. Correct.**
 6 **Q.** Vertigo or dizziness?
 7 **A. Correct.**
 8 **Q.** You see it in both cases; right?
 9 **A. Correct.**
 10 **Q.** Headaches. You can see in heat
 11 exhaustion and organophosphates; right?
 12 **A. Correct.**
 13 **Q.** So if someone testified that -- that you
 14 never see headache under organophosphates, that
 15 would be wrong; right?
 16 **A. Well, I'm sure if you're very sick, you**
 17 **can get a headache. Headaches are a pretty**
 18 **nonspecific finding. Lots of things that cause**
 19 **headache.**
 20 **Q.** Okay. And I appreciate that
 21 clarification. These various signs and symptoms
 22 are nonspecific, meaning it's not -- it doesn't say
 23 this is heat stroke or this is organophosphate;
 24 right?
 25 **A. If that -- those things can go on -- the**

1 **list can go on for miles of what it -- what that**
 2 **causes --**
 3 **Q.** Muscle cramps and twitching. You can see
 4 that in both cases; right?
 5 **A. Correct.**
 6 **Q.** And dehydration. You can see actually
 7 also in organophosphates; right?
 8 **A. Yes. I mean, if somebody is to that**
 9 **extreme, if you're salivating, vomiting, diarrhea**
 10 **so much that that would cause dehydration,**
 11 **absolutely.**
 12 **Q.** And you told this jury yesterday that the
 13 key marker dividing heat exhaustion and heat stroke
 14 is the altered mental status?
 15 **A. Correct.**
 16 **Q.** You can also see that in organophosphate
 17 poisoning; right?
 18 **A. Correct.**
 19 **Q.** The temperature -- now, I know that the
 20 eMedicine article that you copied said 106 degrees
 21 Fahrenheit. Is that right?
 22 **A. That's what the eMedicine article says.**
 23 **Q.** But when you copied it, you changed it to
 24 104; right?
 25 **A. Correct.**

1 **Q.** So you can see high temperatures actually
 2 under both authorities; correct?
 3 **A. I don't believe that the acute setting of**
 4 **heat -- of organophosphate is going to cause a**
 5 **fever.**
 6 **Q.** Thank you. So you're only going to see
 7 that high temperature in heat stroke; right?
 8 Right?
 9 **A. You'd only see an -- I don't believe**
 10 **you'd see an elevated temperature in**
 11 **organophosphate poisoning.**
 12 **Q.** Right. You're only going to see that in
 13 heat stroke?
 14 **A. Correct.**
 15 **Q.** Metabolic acidosis, which this jury had
 16 heard, is, basically, a lot of acid -- right? -- in
 17 your blood?
 18 **A. Correct.**
 19 **Q.** You can see that also in
 20 organophosphates?
 21 **A. Sure.**
 22 **Q.** Is that right?
 23 **A. Sure.**
 24 **Q.** It's nonspecific?
 25 **A. It's nonspecific. The list of metabolic**

1 **acidosis is huge.**
 2 **Q.** But rhabdo -- I'm going to shorten it.
 3 Rhabdo is the breakdown of muscles; correct?
 4 **A. Correct.**
 5 **Q.** You can see that in both heat exhaustion,
 6 heat stroke -- I'm sorry -- heat stroke and
 7 organophosphates; right?
 8 **A. Yes. Be more predominant, I think, in a**
 9 **heat-related illness, especially if dehydration is**
 10 **part of it. But yes. In theory you can definitely**
 11 **have that.**
 12 **Q.** All right. So you would agree with
 13 Dr. Cutshall, who said you can see both -- you can
 14 see it in both cases?
 15 **A. Correct.**
 16 **Q.** The elevated creatinine. Also in both
 17 cases; right?
 18 **A. Correct.**
 19 **Q.** Acute renal failure. Also in both;
 20 correct?
 21 **A. Definitely possible.**
 22 **Q.** Now, Dr. Mosley testified that there are
 23 two things that are inconsistent with heat
 24 stroke -- inconsistent with heat stroke. And that
 25 are -- that is pinpoint pupils or miosis and

1 foaming.
 2 Do you agree or disagree with Dr. Mosley?
 3 **A. I disagree.**
 4 **Q.** Okay. So if Dr. Cutshall testified that
 5 based upon the presence of pinpoint pupils in his
 6 patients and the presence of foaming observed by
 7 witnesses, leads him to be unable to exclude
 8 organophosphates, would you agree or disagree with
 9 that?
 10 **A. Would I disagree with his -- say the**
 11 **question again.**
 12 **Q.** If Dr. Cutshall testified that based upon
 13 the presence of just those two signs alone, the
 14 pinpoint pupils and the foaming, he cannot exclude
 15 organophosphates, would you agree or disagree with
 16 that?
 17 **A. If you looked at only those two symptoms,**
 18 **you could not rule it out.**
 19 **Q.** So you would agree with me that -- first
 20 of all, Dr. Cutshall testified that pinpoint pupils
 21 is like a red flag. It's a telltale sign that
 22 you've got a toxidrome.
 23 Would you agree with that?
 24 **A. Can be. Yes.**
 25 **Q.** And would you agree with Dr. Cutshall,

1 who said that you're going to see pinpoint pupils
 2 under various toxidromes, such as organophosphate
 3 poisoning?
 4 **A. It's one -- it's one of the**
 5 **possibilities. Yes.**
 6 **Q.** Okay. And you would disagree with
 7 Dr. Mosley who said that that would be inconsistent
 8 with heat stroke; is that correct?
 9 **A. Yes.**
 10 **Q.** You testified yesterday regarding Stephen
 11 Ray. Do you remember him?
 12 **A. I do.**
 13 **Q.** And he was one of the participants who
 14 was admitted to Flagstaff Medical Center?
 15 **A. Correct.**
 16 **Q.** Critically ill?
 17 **A. Correct.**
 18 **Q.** And you're pulling out the medical
 19 records; correct?
 20 **A. Yeah.**
 21 **Q.** Okay. And you told the jury yesterday
 22 that you did see Dr. Neff and Dr. Kennedy's
 23 conclusion on the 10th and 11th, a day, I think,
 24 before he was discharged, that they did not believe
 25 that Mr. Ray had heat stroke.

1 Do you remember that?
 2 **A. Yes.**
 3 **Q.** And you saw and you considered that;
 4 right?
 5 **A. Yes.**
 6 **Q.** And you saw and you considered that in
 7 weighing all of the evidence before you -- before
 8 you reached a conclusion in this case --
 9 **A. Yes.**
 10 **Q.** -- is that right?
 11 **A. Yes.**
 12 **Q.** And I want to go through that with you
 13 and ask you how you evaluated that evidence. All
 14 right?
 15 Now, you told -- well, you wrote in your
 16 report that one of the reasons why you believed Liz
 17 Neuman, Kirby Brown, and James Shore died of heat
 18 stroke is because, and I'll quote, multiple
 19 patients showed -- I'm sorry -- multiple patients
 20 had signs and symptoms of classic heat stroke.
 21 Correct?
 22 **A. Correct.**
 23 **Q.** And one of those patients that you were
 24 referring to, based upon your review of all the
 25 information you had, was Stephen Ray?

1 **A. Correct.**
 2 **Q.** Right? So you believed that Stephen Ray
 3 had heat stroke?
 4 **A. Correct.**
 5 **Q.** And when you saw Dr. Neff and
 6 Dr. Kennedy's conclusion, you evaluate it and then
 7 you, using your judgment, discounted it; correct?
 8 **A. Correct.**
 9 **Q.** And you did that before you reached your
 10 opinions in this case; right?
 11 **A. Correct.**
 12 **Q.** And you then wrote a report, and you gave
 13 it to the state?
 14 **A. Correct.**
 15 **Q.** And that report is dated January 10th;
 16 correct?
 17 **A. Correct.**
 18 **Q.** You told the jury yesterday that you
 19 considered but you thought maybe they didn't have
 20 all the information; right?
 21 **A. Could be.**
 22 **Q.** And you looked at their conclusion. You
 23 thought maybe they're not qualified to recognize or
 24 diagnose heat stroke or heat illnesses; right?
 25 **A. I think that maybe they didn't have the**

1 **information that they needed to make that**
2 **diagnosis.**

3 **Q.** Did you testify yesterday, Dr. Dickson,
4 that they might not be qualified?

5 **A. I don't know if I said that. But I think**
6 **it's probably that maybe they didn't have the**
7 **information they needed to make that diagnosis.**

8 **Q.** And that would be really important --
9 right? -- to have all the information before you
10 reach any conclusion in a case?

11 **A. Absolutely.**

12 **Q.** All right. Now, do you have the medical
13 records in front of you?

14 **A. I do.**

15 **Q.** And are you referring -- let me come up
16 to you and see what you're referring to.

17 Do you have a binder like me?

18 **A. Yes.**

19 **Q.** And it starts -- and this is going to be
20 Exhibit 213; right?

21 **A. 213 -- there it is. 213. Yes.**

22 **Q.** Now, your binder is a little bigger than
23 mine. Do you mind if I look through it?

24 **A. Sure.**

25 **Q.** Okay. Let's look through 213, which you

1 said you looked at before you reached your
2 conclusion; right?

3 **A. Correct.**

4 **Q.** You did note in Mr. Ray's emergency
5 department evaluation done at 6:30 p.m. that he had
6 pinpoint pupils; right?

7 **A. At that point, he -- let me look.**
8 **Because if -- he had dilated pupils at the**
9 **beginning.**

10 **Q.** We're going to go to that. Look at 7093,
11 if you will.

12 **A. I don't think I have the same numbers you**
13 **do.**

14 **Q.** You don't have Bates stamp 7093?

15 **A. I don't think I have stamps at all on**
16 **mine.**

17 **Q.** Okay. Let me see. Well, why don't we --
18 why don't we use this.

19 **A. Okay.**

20 **Q.** Looking at that page, Dr. Dickson, do you
21 see the reference to pinpoint pupils and moist
22 skin?

23 **A. Correct.**

24 **Q.** Now, we know from the signs and symptoms
25 of organophosphate poisoning that it's a

1 cholinergic toxidrome; correct?

2 **A. Correct.**

3 **Q.** But here they have anti-?

4 **A. Correct.**

5 **Q.** And based upon the moist skin and
6 pinpoint, that would be more consistent with a
7 cholinergic; correct?

8 **A. Correct.**

9 **Q.** And you looked at this before you reached
10 your conclusion and considered it; right?

11 **A. Correct.**

12 **Q.** Then if you will look at the reference
13 here, you did also note that they consulted with
14 Arizona Poison Control?

15 **A. Correct.**

16 **Q.** You also noted when you looked at this
17 before you reached your conclusion that one of
18 their differential diagnosis was acute toxidrome --
19 and, I'm sorry. That's a little hard to read.

20 **A. Yes.**

21 **Q.** Right? Is that right?

22 **A. That is correct.**

23 **Q.** But when you looked at this before you
24 reached your conclusion, you weighed it and thought
25 the big picture more consistent with heat stroke;

1 right?

2 **A. Correct.**

3 **Q.** Now, you had mentioned yesterday that
4 there was one patient who had dilated pupils. Is
5 it Stephen Ray?

6 **A. Yes.**

7 **Q.** So it was just Stephen Ray and nobody
8 else; right?

9 **A. Could be other ones as well. Not that I**
10 **remember right now. The one that stands out is**
11 **Stephen Ray.**

12 **Q.** All right. And you did note that in the
13 ER diagnosis he was pinpoint; right?

14 **A. Let's see what they say here. Well, he**
15 **says, eyes are equal -- pupils are equally round**
16 **and reactive to light.**

17 **Q.** No, no, no. What I'm asking is
18 earlier -- let me put it back up here.

19 There is the ER evaluation; right?

20 **A. Right. And I'm looking under physical**
21 **exam. And it says, pupils are equal and reactive**
22 **to light.**

23 **Q.** All right. What I'm looking at,
24 Dr. Dickson, is this. Pinpoint pupils.

25 **A. Okay.**

1 Q. All right?

2 A. There seems to be a discrepancy. One

3 says --

4 Q. You think that -- I'm sorry. Go ahead.

5 A. Well, one says, pinpoint, and one says,

6 equal and reactive.

7 Q. You think equal and reactive is not

8 pinpoint; right?

9 A. Well, pinpoint are generally very, very

10 small. Doesn't really get the size. But we can go

11 with pinpoint. That's fine.

12 Q. Okay. And you looked at all this before

13 you reached your conclusion; right?

14 A. Correct.

15 Q. All right. Now, you would also note --

16 you had the EMS records; right?

17 A. Yes.

18 Q. Before you reached your conclusion?

19 A. Yes.

20 Q. And so let's look at that. That's going

21 to be page Bates stamp 6995 in the Exhibit I gave

22 you.

23 A. Correct.

24 Q. You talked about how what you would

25 expect to see in a case of organophosphates is a

1 lot of drooling and salivation.

2 Do you remember that?

3 A. Yes.

4 Q. Did you note when you -- before you

5 reached your conclusion that Mr. Ray was observed

6 by Guardian Air paramedics upon arrival to be

7 drooling from the mouth?

8 A. That's what we started to talk about this

9 a little bit yesterday. When you look through --

10 this comes back to looking at the whole, big

11 picture.

12 So initially he said drooling from mouth

13 and dilated pupils. Then under the initial

14 physical exam, he said vomitus coming from the

15 mouth. So question is, is it drooling or is it

16 vomit? And that's the question.

17 Q. And these were the thought processes that

18 you got -- you went through when you looked at

19 these records before you drafted your report;

20 right?

21 A. Right. And then when he went in to look

22 at the airway, and it says, the patient had both

23 eyes open with tears, vomitus, and sputum. So --

24 and the pupils are dilated. So here we are looking

25 at the big picture. You've got somebody that has

1 got -- is it drooling? Is it vomiting?

2 And looks like the initial -- when you do

3 your subjective -- that's the beginning part --

4 you're trying to take a big picture. And it

5 looks -- well, maybe they're drooling. And a good

6 medic is thinking, is this -- is this a cholinergic

7 toxidrome? It's a good thing they have to know is

8 if there's organophosphates, they need to wash the

9 people off because they can get sick too.

10 And that's a big thing with

11 organophosphates is you don't want to get your

12 first responders or your physicians and nurses sick

13 with all the clothes they have on that can carry

14 this. So they thought about it, which is really,

15 really good.

16 But now when you get down to the actual

17 physical exam when you're actually looking at their

18 airway, it doesn't look like it's drooling and it's

19 actually vomit, which is a big difference.

20 And this is where I take it a little

21 further of why looking at the big picture I felt

22 this wasn't organophosphates. Even the patients

23 that they were coding -- Kirby Brown and James

24 Shore -- those are the people that had no cardiac

25 arrest. They did something called "CCR."

1 And we've always heard CPR, but they've

2 now changed it. It's cardiocerebral resuscitation.

3 And instead of actually breathing for them and

4 pressing on their chest, they've done these studies

5 that if you just press on their chest and put some

6 oxygen on them, it does better for them. And this

7 is what they did. They did this protocol called

8 "CCR."

9 Now, if you are going to be dying from

10 acute respiratory distress from organophosphate

11 poisoning, you're going to have massive amounts of

12 fluid coming out your mouth, and you aren't going

13 to be able to do that. If you just put the mask

14 on, if their airway is full of secretions and

15 things like that, then it's -- and you can't

16 suction out, that these people with

17 organophosphates -- if they're going to die,

18 they're going to have this massive amount of fluid

19 coming out.

20 You can't lie somebody on their back and

21 stick a mask on them and press on the chest and

22 expect the air to get in there. And that's where

23 the difference really comes in in the acute

24 setting. If these people are really that sick with

25 organophosphate, then the patients that are dying

1 wouldn't be able to have this process done. They
2 lie these people down on the gurney. If I'm having
3 profuse amounts of fluids coming out of my mouth, I
4 don't want to be on my back. That's not going to
5 be good.

6 These medics wouldn't put them on their
7 back. They'd put them on their side. And there
8 would be a description of continuously flowing
9 fluids. So this is where making this distinction
10 came to light for me.

11 Q. And you went through this very thoughtful
12 consideration of the records; right?

13 A. Yes.

14 Q. That you just explained to the jury;
15 right?

16 A. Yes.

17 Q. That then led you to exclude
18 organophosphates; correct?

19 A. That's part of the -- and then you go
20 into the doctors --

21 Q. I just want to -- because you just went
22 through a very thoughtful explanation to the
23 jury --

24 A. Okay.

25 Q. -- about what your thinking was when you

1 went through the records before reaching your
2 conclusions.

3 A. Yes. That was part of it.

4 Q. Okay. And that's what led you to exclude
5 part of it -- to exclude organophosphates?

6 A. Correct.

7 Q. And to conclude that it's heat stroke;
8 correct?

9 A. Correct.

10 Q. 99 percent certain you told us; right?

11 A. Correct.

12 Q. Now, we talked about how when you were
13 retained on December 6th, 2010, the state provided
14 you with materials to review on December 16, 2010;
15 right?

16 A. Uh-huh.

17 Q. And I'm just going to show you this --
18 for your edification here. This is a letter to you
19 dated December 16th; correct?

20 A. Correct.

21 Q. And it says, we're enclosing the autopsy
22 reports?

23 A. Correct.

24 Q. The medical records for the three
25 victims?

1 A. Correct.

2 Q. And the medical records relating to the
3 surviving participants of the 2009 sweat lodge;
4 right?

5 A. It says, selected supplements for --

6 Q. I'm concentrating on the record.

7 A. Oh. Okay.

8 Q. The medical records; right?

9 A. Yep.

10 Q. Now, Mr. Hughes marked yesterday all of
11 the remaining medical records in this case, which
12 you received; right?

13 Let's confirm. You received 151, which
14 is Linda Andresano?

15 A. Let me get my list.

16 Q. Right?

17 A. Yes. There it is.

18 Q. And you see at the bottom its Bates stamp
19 numbers; right?

20 A. Correct.

21 Q. And so the jury understands, when the
22 state produces documents to the defense, they put
23 at the bottom right-hand corner a numbering called
24 a "Bates number." Right?

25 A. Correct.

1 Q. And it's sequential; right?

2 A. Correct.

3 Q. So you received on December 16th, 2010,
4 Exhibit 151, which is Linda Andresano's medical
5 records; correct?

6 A. Yes. I have the record here.

7 Q. Okay. And you also received Exhibit 152,
8 which is Ms. Andresano's ambulance company record;
9 right?

10 A. Let's see if it's in here.
11 There it is.

12 Q. All right. And it's the same Bates stamp
13 number, 1562?

14 A. Okay.

15 Q. You also received Sandra Andretti's,
16 which is 384?

17 A. Correct.

18 Q. So just bear with me.

19 And that's also sequential; right?

20 This binder that you have is sequentially numbered?

21 A. I hope so.

22 Q. All right. And you also received 385,
23 which is Sandra Andretti's ambulance company
24 records; right?

25 A. Yep.

1 Q. Kristina Bivins, Exhibit 386; right?
 2 A. **Kristina Bivins. Yes. I've got part.**
 3 **Yeah.**
 4 Q. That's 387. And you also got 386?
 5 A. **Which is --**
 6 Q. Right?
 7 A. **Looks like it. Yes.**
 8 Q. And, again, you got all this on
 9 December 16, 2010; right?
 10 A. **If you say so.**
 11 THE COURT: Excuse me. I'm sorry, Ms. Do and
 12 Dr. Dickson, to interrupt. But I have a note. We
 13 do need --
 14 MS. DO: All right, Your Honor. Thank you.
 15 THE COURT: -- to take a recess at this time
 16 for the jury. And we'll do that. It's time.
 17 Please remember the admonition and be
 18 reassembled at five after.
 19 And, Dr. Dickson, you're excused for the
 20 recess as well.
 21 I'm going to ask the parties to remain
 22 just a moment.
 23 (Proceedings continued outside presence
 24 of jury.)
 25 THE COURT: Ms. Do, I'd like to have a time

1 estimate?
 2 MS. DO: Your Honor, I have about maybe 30, 40
 3 minutes left.
 4 THE COURT: I am asking Diane to work out
 5 the -- the actual trial days that we have planned.
 6 And I -- I actually think the last day of trial was
 7 June 21st was -- I think was actually designated at
 8 the start. I'm going to check that.
 9 I just wanted the parties to know that
 10 she's going back through. And I'm going to put
 11 together exactly what was stated to be the trial
 12 days. And we'll have that.
 13 So I need to be here to take care of a
 14 technical problem, and we'll be in recess.
 15 Thank you.
 16 (Recess.)
 17 (Proceedings continued in the presence of
 18 jury.)
 19 THE COURT: The record will show the presence
 20 of Mr. Ray, the attorneys, the jury. Dr. Dickson
 21 has returned to the stand.
 22 Ms. Do.
 23 MS. DO: Thank you.
 24 Q. Dr. Dickson, again, thank you for your
 25 patience.

1 I'd like to pick up where we left off.
 2 We were going through the records that you received
 3 by the state on December 16th, 2010. And we left
 4 off at Exhibit 165, which is Kim Brinkley. You did
 5 get 167; right? You need to look at the Bates
 6 stamp number?
 7 A. **Okay.**
 8 Q. 1623.
 9 A. **Okay. 1623. Yes.**
 10 Q. You also got Bates stamp starting 1635,
 11 which is Exhibit 373?
 12 A. **1635. It could be in here. That is**
 13 **under victims' medical records. 1635.**
 14 Q. Okay. So the jury knows, you received
 15 these records on a CD from the state; right?
 16 A. **Correct.**
 17 Q. And then you printed it up, and then you
 18 bound it in the organization that you have?
 19 A. **Correct.**
 20 Q. But I just want to confirm what you
 21 received on December 16th. And you would agree you
 22 got -- this is James Shore's record, Exhibit 373 --
 23 or Kirby Brown's, rather?
 24 A. **Well, they used the name, Doe. And it's**
 25 **Kirby Brown.**

1 Q. Okay. You also got 1642, the Verde
 2 Valley Fire District sheet; right?
 3 A. **Yep.**
 4 Q. You got Lou Caci's medical records
 5 starting at 1683?
 6 A. **Yes.**
 7 Q. And that's Exhibit 175. And then you
 8 also got Exhibit 176, starting at 1688 Bates stamp;
 9 correct?
 10 A. **Yes.**
 11 Q. And that would be Lou Caci's EMT records?
 12 A. **Correct.**
 13 Q. You got Robert Grain at 1735 Bates stamp?
 14 A. **Correct.**
 15 Q. Correct?
 16 And that's Exhibit 388 for the jury's
 17 information.
 18 Exhibit 389 you also got; right?
 19 Exhibit 389 starts at Bates stamp 1738?
 20 A. **Yes.**
 21 Q. And that's related to Amy Grimes, I
 22 believe. You also got her medical records, 390?
 23 A. **1755. Yes.**
 24 Q. Okay. That's Exhibit 390.
 25 You got Exhibit 391 at 1760; correct?

1 **A. Yes.**
 2 **Q.** And that would be Amy Grimes's ambulance
 3 records; correct?
 4 **A. I have 1760. I have to look up the name**
 5 **because they don't have the name -- oh. There it**
 6 **is. Amy Grimes.**
 7 **Q.** And the next one you got is Dennis
 8 Mehravar?
 9 **A. Correct.**
 10 **Q.** Okay. That's Exhibit 192. Did you also
 11 get Bates stamp 1815, Exhibit 193?
 12 **A. Yes.**
 13 **Q.** Brandy Rainey, Exhibit 208, starting at
 14 Bates stamp 1943?
 15 **A. Yes.**
 16 **Q.** You got Exhibit 209 starting at Bates
 17 stamp 1948?
 18 **A. Yes.**
 19 **Q.** Sean Ronan, Exhibit 392, starting
 20 exhibit -- Bates stamp 2001; correct?
 21 **A. There it is.**
 22 **Q.** Exhibit 393, starting at Bates stamp
 23 2028?
 24 **A. 2028?**
 25 **Q.** Yeah.

1 **A. There is it.**
 2 **Q.** And so, again, the jurors understand, the
 3 set of records you received from the state on
 4 December 16th, 2010, was in somewhat a sequential
 5 order according to the Bates stamp; right?
 6 **A. Okay.**
 7 **Q.** Is that right? Appears to be?
 8 **A. It appears to be. Yes.**
 9 **Q.** All right. And then let's look at 2043,
 10 which may be in that book because it pertains to
 11 James Shore.
 12 **A. Yes.**
 13 **Q.** Right?
 14 **A. Right here.**
 15 **Q.** Okay. And then you also received
 16 Exhibit 379, starting at 2046 Bates stamp; right?
 17 That's James Shore's Verde Valley Fire District EMT
 18 record.
 19 **A. Yes.**
 20 **Q.** And these came to you on a disk that was
 21 dated December 16th, 2010; right?
 22 **A. Yes.**
 23 **Q.** You also got Exhibit 222, which is Sidney
 24 Spencer's records at 2083; right?
 25 **A. Yes.**

1 **Q.** Almost done. 394 at 2120.
 2 **A. Who's that?**
 3 **Q.** This is Linnette Veguilla.
 4 **A. 2120. There it is.**
 5 **Q.** That's Exhibit 394. And last,
 6 Exhibit 395, would be 2128 Bates stamp. Linnette
 7 Veguilla's EMT record; correct?
 8 **A. There it is.**
 9 **Q.** Okay. So the jury understands, these
 10 records came to you on a disk dated
 11 December 16th, 2010; right?
 12 **A. Correct.**
 13 **Q.** And at the break you were kind enough to
 14 give me the copy of what was given to you; right?
 15 **A. Correct.**
 16 **Q.** Since you've printed out, do you mind if
 17 I keep this?
 18 **A. That's up to them, I guess.**
 19 MS. DO: I'd like to mark this, Your Honor.
 20 THE COURT: It can be marked. But we can
 21 discuss that at a later time.
 22 MS. DO: Okay. That's fine.
 23 MR. HUGHES: Your Honor, we did provide a copy
 24 to the defense.
 25 THE COURT: We'll have a mark on it when we

1 get it back. The copy -- a copy will be marked at
 2 that time.
 3 MS. DO: Thank you, Your Honor.
 4 **Q.** One set that was missing in this binder
 5 that we just went through that you received
 6 December 16th, 2010, is this -- which has been
 7 marked as Exhibit 581. Did you get records that
 8 were Bates stamp 1955 to 1992? Do you know?
 9 Let me show you Exhibit 581.
 10 **A. Is this Liz Neuman, by any chance?**
 11 **Q.** No. This is Stephen Ray.
 12 **A. Oh, yeah. Stephen Ray's over here.**
 13 **Q.** Can you find the original 1955 to 1992?
 14 **A. These are not stamped.**
 15 **Q.** Okay. So let's put that aside for a
 16 second.
 17 **A. Okay.**
 18 **Q.** You would agree with me that the set that
 19 we just went through is Bates stamped sequentially
 20 starting with 1554 and ending in 2129; right?
 21 **A. Uh-huh.**
 22 **Q.** So Stephen Ray's medical records, which
 23 is 38 pages here, 1955 to 1992, would fit into this
 24 sequential order; correct? Is that right?
 25 **A. Makes sense.**

1 Q. Here's 1948; right? It would fit right
 2 here.
 3 A. **That's the order of the numbers.**
 4 Q. And I had Ms. Seifter -- she's on the
 5 defense team -- look at your CD that you gave to
 6 me. And it appears that the records you were
 7 provided on December 16th, 2010, contained 38 pages
 8 from Mr. Ray's records, which is Bates stamp 1955.
 9 Do you have any reason to dispute that?
 10 A. **No.**
 11 Q. Okay. We're going to mark this that
 12 there isn't a dispute.
 13 Now, I showed you earlier a letter to
 14 again confirm that you received these records,
 15 including the 38 pages for Mr. Ray on
 16 December 16th, 2010; right?
 17 A. **Uh-huh.**
 18 Q. And that was -- that came with the CD
 19 that you have in front of you that we're going to
 20 mark; right?
 21 A. **I believe so.**
 22 Q. No reason to dispute it?
 23 A. **No.**
 24 Q. Okay. Now, you wrote your report on
 25 January 10, 2011; right?

1 A. **Correct.**
 2 Q. Or you finalized it rather; right?
 3 A. **That was my preliminary report then.**
 4 Q. Which is -- marking it as evidence here.
 5 And it was dated January 10, 2011?
 6 A. **Correct.**
 7 Q. 25 days after you received what's
 8 contained on that CD?
 9 A. **Okay.**
 10 Q. Is that right?
 11 A. **Sure. Yes.**
 12 Q. Okay. I think I counted my days
 13 correctly.
 14 Now, my question to you is, you earlier
 15 had told the jury, and you -- you went through a
 16 rather long explanation that you had considered
 17 everything you had seen in Mr. Ray's medical
 18 records, the EMT record regarding the drooling, the
 19 vomitus, the tears, and then Dr. Neff and
 20 Dr. Kennedy's conclusion that he did not have heat
 21 stroke? Correct?
 22 A. **Correct.**
 23 Q. And you did that all, and you went
 24 through a very thoughtful consideration of that
 25 evidence --

1 A. **Correct.**
 2 Q. -- before you wrote your report; correct?
 3 A. **Well, I've looked at this stuff so many**
 4 **times. I'm not sure when. And there's also been**
 5 **times that -- when more information, somebody**
 6 **asked, I was told that there was possible**
 7 **organophosphate poisoning again, I went back and**
 8 **looked at it again, all the records, to see, well,**
 9 **let's make sure that the evidence shows it.**
 10 **So when -- are you trying to say I didn't**
 11 **have this information --**
 12 Q. I'm not trying to say anything. I'm
 13 asking you questions.
 14 A. **Okay.**
 15 Q. And it's the same questions I've asked
 16 you many times earlier.
 17 You told this jury that you went through
 18 a very thoughtful consideration, that you looked at
 19 all the evidence and you discounted it using your
 20 judgment and excluded organophosphates and
 21 concluded heat stroke; right?
 22 A. **Correct.**
 23 Q. And, in fact, the thought process of why
 24 you disagreed with Dr. Neff or Dr. Kennedy is
 25 perhaps they didn't have all the information;

1 right?
 2 A. **They could not have.**
 3 Q. And perhaps they -- they may not be
 4 qualified? You don't know. But that's something
 5 you had said yesterday; right?
 6 A. **Well, it's possible if they don't know**
 7 **about the illness or see it very frequently or**
 8 **organophosphates.**
 9 Q. Okay. Let's take a look, then, at
 10 Exhibit 581, which is 38 pages, which Ms. Seifter
 11 confirmed is on your CD. And can you go through
 12 that and -- and identify for the jury where it is
 13 that you see the EMT record.
 14 A. **I don't see it.**
 15 Q. Can you tell the jury where in that
 16 Exhibit 581 that you received on December 16, 2010,
 17 that -- that there is the two reports by Dr. Neff
 18 and Dr. Kennedy?
 19 A. **I'm guessing it's not in here. Is that**
 20 **correct?**
 21 Q. I don't want you to guess. Do you see it
 22 in there?
 23 It's not in there; right?
 24 A. **I don't -- I don't want to waste your**
 25 **time. If you're saying no, I say no. I don't see**

1 it.

2 Q. Okay. So the records you received for
3 Stephen Ray on December 16, 2010, 25 days before
4 you report, that you considered didn't contain the
5 EMS record; correct?

6 A. Correct.

7 Q. And it didn't contain Dr. Neff's report;
8 right?

9 A. **I don't know. I'd have to look at it.**
10 **This is what I have here.**

11 Q. And we're going to get to that.

12 A. Okay.

13 Q. But in Exhibit 581 that you received 25
14 days before you finalized your conclusion in this
15 case -- those records did not contain Dr. Neff's
16 conclusion that Mr. Ray did not have heat stroke;
17 right?

18 A. **If that's what you're saying. I don't**
19 **know what's on the disk to tell you for sure.**

20 Q. Okay. Well, we can confirm. That's why
21 we're going to mark it as an exhibit.

22 A. Please.

23 Q. But 581, sir -- is it in there? This
24 exhibit right here.

25 A. **This exhibit. No, it is not.**

1 Q. Neither is Dr. Kennedy's report; right?

2 A. Right.

3 Q. Okay. Now, on February 8th, 2011,
4 after -- about a month after you wrote your report,
5 you received a letter from the state after several
6 emails. And I've marked this as Exhibit 1016.

7 Do you recognize this?

8 A. Sure. Yes.

9 Q. And this email is from Kathy Durrer,
10 who's not in court right now. But you know that
11 she works for Ms. Polk and Mr. Hughes?

12 A. Correct.

13 Q. And it's emailed to Dr. Dickson?

14 A. Correct.

15 Q. On February 4, 2011?

16 A. Correct.

17 Q. And it says here, Dr. Dickson, we have
18 received the complete medical records of Stephen
19 Ray, who was hospitalized at Flagstaff Medical
20 Center for several days following his participation
21 in the 2009 sweat lodge ceremony; correct?

22 A. Correct.

23 Q. Before we only had partial records for
24 Mr. Ray?

25 A. Correct.

1 Q. Bill Hughes wanted me to send the records
2 to you for your review?

3 A. Correct.

4 Q. And they are attached; correct?

5 A. Correct.

6 Q. And then you wrote back and said that
7 you're having trouble downloading it; correct?

8 A. Correct.

9 Q. And then they -- they emailed you back
10 and said that they would send it to you --

11 A. Okay.

12 Q. -- which they did on February 8th; right?

13 A. Yes. That's correct.

14 Q. And what they sent to you -- and I'll
15 represent to you this is what we received on or
16 about February 8th is Exhibit 213, which contains
17 the full volume that you've been looking at; right?

18 A. Yes.

19 Q. And it's in that volume that you received
20 on February 8 that the EMS records show Mr. Ray to
21 have drooling, tearing at the eyes; right?

22 A. Correct.

23 Q. And it's in that record that you received
24 on February 8th that Dr. Neff and Dr. Kennedy's
25 reports contained -- are contained, and the

1 conclusion is he did not have heat stroke; correct?

2 A. Okay.

3 Q. Correct?

4 A. **That's what their conclusion was. Yes.**

5 Q. So obviously, Dr. Dickson, you didn't
6 have those records, you didn't consider it, you
7 didn't look through them, before you reached your
8 conclusion on January 10th because you didn't have
9 them; correct?

10 A. Correct.

11 Q. And so when you explained to the jurors
12 yesterday and today that you did go through and
13 consider the evidence of Mr. Ray's records and went
14 through your thought processes and rejected
15 Dr. Neff's conclusion, that was wrong?

16 A. **No. It's not wrong at all. Let me**
17 **explain to you. That's the information I had in**
18 **front of me at this point in time. So I did**
19 **consider it when I discussed my reasoning was based**
20 **on all this information.**

21 Q. Maybe you don't understand my question.
22 Let me -- let me ask it again.

23 You've made several points when I asked
24 you about Dr. Mosley or Dr. Lyon or Dr. Cutshall,
25 and even Dr. Neff and Dr. Kennedy that perhaps

1 their conclusions are wrong because they didn't
2 have all the available information.

3 Do you remember that?

4 **A. Uh-huh.**

5 **Q.** And that's what you called the "big
6 picture." You have the big picture but maybe they
7 don't?

8 **A. Correct.**

9 **Q.** Right?

10 **A. It's possible.**

11 **Q.** And what I'm asking you, and I've asked
12 you for two days now, is you told the jury that you
13 did have this information of Mr. Ray prior to
14 reaching your conclusion on January 10, 2011.

15 **A. No. I don't think I said that.**

16 **Q.** You didn't say that?

17 **A. No. I give you the information as it
18 comes to me and --**

19 **Q.** This morning before we took the break --

20 **A. Okay.**

21 **Q.** -- we looked at the records again, and
22 you went into a very -- what we lawyers call
23 narrative.

24 **A. Okay.**

25 **Q.** You looked to the jury and you gave them

1 a very thoughtful answer --

2 **A. Correct.**

3 **Q.** -- that you went through all of this
4 information before you reached your conclusion, did
5 you not?

6 **A. Today before I -- what my information is
7 in front of you is the information that's in front
8 of you. And that's where I reached my conclusion.
9 Whenever some more information came to me, because
10 it did come in several events --**

11 **There's one other thing that she didn't
12 mention. Liz Neuman. Her initial amount that I
13 got was this much. And now I have five of these
14 lovely binders all on Liz Neuman. And I've gone
15 through them again to make sure that it wouldn't
16 change my opinion when I came here to speak on the
17 stand.**

18 **Q.** That's not my question, Dr. Dickson. And
19 I know that you received additional information on
20 Ms. Neuman. I'd like to focus on Mr. Ray.

21 **A. Okay.**

22 **Q.** Before we took the break, I asked you
23 probably a dozen times, you considered, you looked
24 at, the information contained in the EMS record for
25 Mr. Ray before reaching your conclusion?

1 Your answer was yes; correct?

2 **A. Correct.**

3 **Q.** And your conclusion was reached, as the
4 jury has seen, in your report dated
5 January 10, 2011; correct?

6 **A. That's where I think we're differing. My
7 conclusion has been -- information has been added,
8 and I relooked at the data again. And I might have
9 adjusted it if I'd found information that had said,
10 well, maybe the original information now that I
11 have more information, I would change my opinion.**

12 **But I've looked at it. And it's a
13 dynamic process. Now that I have the information
14 that I have before me now, this is my opinion.
15 Here it is.**

16 **Q.** We -- we get that.

17 **A. Okay.**

18 **Q.** My question is very specific.

19 **A. Okay.**

20 **Q.** And I've asked this many times. You told
21 this jury -- you looked at them. And you told them
22 that you had Mr. Ray's complete medical records,
23 which you reviewed with thoughtfulness and
24 considered before rejecting the conclusions of
25 Dr. Neff and Dr. Kennedy prior -- prior to reaching

1 your conclusion in this case?

2 **A. My conclusion in this case --**

3 **Q.** Just answer that question first, and then
4 we'll go to the next one.

5 **A. Well, it's not a yes or no question. My
6 conclusion of this case came as I get the data. So
7 if you presented -- just like in this trial you've
8 had these hypothetical situations of if Dr. "X" or
9 Dr. "Y" says, well, I changed my opinion, you asked
10 me, does that change my opinion? And I think about
11 it. I mull it over. And I give you an answer.**

12 **So there's -- this is a continuous
13 process. If you provide me with more information,
14 it could change things as well. But with the
15 information you see in front of me today and that
16 you've presented with me, I give you all my
17 opinions.**

18 **Q.** I understand that, Dr. Dickson. I'm
19 going to go back to my question.

20 **The question I asked you, the same
21 questions I asked you yesterday and the same
22 questions I asked you this morning before the break
23 is, you considered, reviewed, and thought about the
24 records from Mr. Ray, which included the EMS and
25 Dr. Neff and Dr. Kennedy's report before you**

1 reached your conclusion on January 10, and your
 2 answer was yes; correct?
 3 **A. I don't think you said January 10th. The**
 4 **question is is where is my opinion now?**
 5 **Q.** Well, the record is the record --
 6 **A. Okay.**
 7 **Q.** -- and it's going to be up to the jury to
 8 decide.
 9 **A. Absolutely.**
 10 **Q.** So are you saying now that you never told
 11 this jury that you considered the EMS records,
 12 Dr. Neff and Dr. Kennedy's conclusion, thought
 13 about it, looked at the big picture, discounted it
 14 for your reasons prior to writing your report? Is
 15 that your testimony now?
 16 **A. Well, apparently I didn't have all that**
 17 **when I wrote my report. But this, again, is the --**
 18 **Q.** Dr. Dickson, I have to stop
 19 you because --
 20 **A. Okay.**
 21 **Q.** -- the jury is entitled to an answer to
 22 the question. Okay?
 23 **A. Absolutely.**
 24 **Q.** The question is, is it now your testimony
 25 that you never told the jury yesterday or this

1 morning that you had looked at those records, the
 2 EMS, Dr. Kennedy's and Dr. Neff's reports,
 3 considered it, thought about it, looked at the big
 4 picture, and discounted it before writing your
 5 report? That's yes or no.
 6 **A. I couldn't tell you. You have to look at**
 7 **the record. If that's what I said, that's what I**
 8 **said.**
 9 **Q.** So --
 10 **A. The answer to that is, ultimately, if I**
 11 **spoke incorrectly, I apologize. My information is**
 12 **based on what I have now. Again, if more**
 13 **information comes to me, obviously I -- you can**
 14 **change your opinion. But this is a fluid, dynamic**
 15 **process. As I get more information, I look at it**
 16 **again. I can't tell you how many times I've looked**
 17 **at all this stuff.**
 18 **Q.** I'm going to show you the reports you
 19 wrote, Exhibit 111 -- 1011, 1012, 1013, all dated
 20 January 10; right?
 21 **A. Correct.**
 22 **Q.** 2011?
 23 **A. Correct.**
 24 **Q.** When you wrote that report, you only had
 25 38 pages of Mr. Ray's records, which is on that CD

1 you gave us; correct?
 2 **A. Uh-huh.**
 3 **Q.** Is that yes?
 4 **A. Yes.**
 5 **Q.** Which you received on December 16, 2010;
 6 right?
 7 **A. Yes.**
 8 **Q.** So if you told the jury earlier several
 9 times that you looked at the big picture and
 10 considered all the evidence, including Mr. Ray's
 11 EMS records and Dr. Neff and Dr. Kennedy, but felt
 12 that the signs and symptoms big picture was heat
 13 stroke --
 14 **A. Correct.**
 15 **Q.** -- that would have been false testimony
 16 if you said that; correct?
 17 **A. Well, you have to add the January 10th**
 18 **onto that.**
 19 **Q.** Correct. Right?
 20 **A. If I said that, I apologize.**
 21 **Q.** So when you went through and gave them
 22 that long explanation of why it was you considered
 23 all of these things before you reached your
 24 conclusion, that's demonstrably wrong because, in
 25 fact, Doctor, you didn't receive the information

1 regarding Mr. Ray's EMS or Dr. Kennedy's report
 2 saying no heat stroke and Dr. Neff's report saying
 3 no heat stroke until a month after you wrote your
 4 report; right?
 5 **A. Say the question again?**
 6 **Q.** You didn't receive the information
 7 regarding Mr. Ray's EMS records, Dr. Neff's
 8 conclusion of no heat stroke, Dr. Kennedy's
 9 conclusion of no heat stroke, until a month after
 10 you wrote your report?
 11 **A. That is absolutely correct.**
 12 **Q.** Okay. So when you had speculated that
 13 Dr. Mosley or Dr. Lyon or Dr. Cutshall or Dr. Neff
 14 or Dr. Kennedy didn't have all the available
 15 information before they reached their conclusion,
 16 that obviously is speculation; right?
 17 **A. Correct.**
 18 **Q.** But what is true is that you had not
 19 received all of the available information before
 20 you reached your conclusion on January 10th;
 21 correct?
 22 **A. I had not -- when I wrote this on**
 23 **January 10th, I did not have everything. This was**
 24 **my opinion at the time of the information I had on**
 25 **January 10th. Correct.**

1 Q. Okay. So now you have all the available
2 information.

3 A. Correct.

4 Q. You told the jury yesterday 99 percent
5 certain that this is a case of heat stroke; right?

6 A. Correct.

7 Q. You told the jury this morning that you
8 believe, based upon your review of the records,
9 that Mr. Ray is one of the people you reference in
10 the report as having heat stroke; right?

11 A. Yeah.

12 Q. Right?

13 A. Correct.

14 Q. And that date -- that report is dated
15 January 10th; right?

16 A. Correct.

17 Q. One of the multiple patients who had heat
18 stroke would include Stephen Ray; correct?

19 A. Correct.

20 Q. Now it's clear to the jurors that you
21 didn't have these medical records, the complete
22 medical records, until one month after you reached
23 that conclusion; right?

24 A. I don't think that's clear.

25 Q. Well, we've marked into evidence

1 Exhibit 1016 showing that you received the complete
2 medical records on February 8th; correct?

3 A. Yes. So you're saying that the jury
4 knows -- you guys know that I didn't get everything
5 all at once? Yes. I agree with that.

6 Q. Specifically Stephen Ray?

7 A. Correct.

8 Q. Now you know that two doctors who looked
9 at Mr. Ray concluded Mr. Ray does not appear to
10 have heat stroke?

11 A. Correct.

12 Q. Right?

13 A. Correct.

14 Q. Does that change your opinion in any way?

15 A. We already did this. No.

16 Q. Doesn't at all?

17 A. No.

18 Q. You kept saying yesterday that maybe
19 these other doctors didn't have all the information
20 or maybe they didn't look at the big picture.

21 Let me ask you this, Dr. Dickson: You're
22 the only doctor in this case that has testified to
23 a degree of certainty 99 percent heat stroke, that
24 you can rule out organophosphates, that the signs
25 and symptoms are inconsistent with

1 organophosphates, and that Dr. Paul is wrong. That
2 puts you in stark difference to Dr. Cutshall,
3 Dr. Lyon, and Dr. Mosley, and will when Dr. Paul
4 testifies.

5 What information do you have that allows
6 you to reach the conclusions that you have in this
7 case that makes Drs. Cutshall, Lyon, Mosley, or
8 Dr. Paul wrong?

9 A. Well, let's back up a little. We redid
10 this discussion yesterday for a while.

11 Q. Let me -- let me maybe ask a more
12 specific question.

13 A. Okay.

14 Q. What information, i.e., medical records
15 autopsy reports -- what information do you have
16 that these doctors don't have?

17 A. I don't know what they had at the time.
18 I assume they have the same.

19 Q. The same as you; right?

20 A. Correct.

21 Q. So looking at the same records, four
22 doctors reached a different conclusion than yours?

23 A. Well, not in the medical records they
24 didn't.

25 Q. I understand. But you know now that

1 they've testified; right?

2 A. Well, you told me hypothetically
3 yesterday.

4 Q. Correct.

5 A. Okay.

6 Q. Okay. So no reason to dispute that;
7 right?

8 A. A hypothetical?

9 Q. Right.

10 A. Okay. No.

11 Q. Okay. So if this jury has heard from
12 three doctors and will hear from a fourth, and four
13 doctors have said they cannot rule out
14 organophosphates, and the signs and symptoms are
15 consistent with organophosphates, that would be an
16 opinion very different from the one you've offered
17 on the stand; right?

18 A. Hypothetically, yeah. But that's what
19 we're going back to. You're telling me that all
20 these doctors said that all these signs and
21 symptoms are consistent with organophosphates, not
22 consistent with heat stroke. That's completely
23 opposite to what they said in their medical record.

24 Q. And it's what you relied on -- right? --
25 the medical records?

1 **A. Absolutely.**
 2 **Q.** And the autopsy report?
 3 **A. And it's completely opposite to their**
 4 **physical exam findings.**
 5 **Q.** So you're saying now the doctors'
 6 testimony in this case to this jury is all wrong
 7 compared to the medical records? Is that what
 8 you're saying?
 9 MR. HUGHES: Objection. Misstates the
 10 doctor's total testimony to the jury.
 11 THE COURT: Sustained.
 12 **Q.** BY MS. DO: You've just told the
 13 jury that -- and I understand you weren't here.
 14 The jury was.
 15 **A. Right.**
 16 **Q.** Hypothetically that was the testimony of
 17 Dr. Cutshall, Dr. Lyon, Dr. Mosley.
 18 **A. Uh-huh.**
 19 **Q.** You're saying that it's all inconsistent
 20 with the medical records, their physical exam, you
 21 said; right?
 22 **A. No. I said their physical exam was**
 23 **consistent with heat illness.**
 24 **Q.** Okay. You're not following me. Let me
 25 ask it one more time.

1 **A. Okay.**
 2 **Q.** You understand in the hypothetical that
 3 if the jury has heard testimony, evidence, from
 4 that witness stand from Dr. Cutshall, Dr. Lyon, and
 5 Dr. Mosley that they cannot rule out
 6 organophosphates, that there are signs and symptoms
 7 consistent with organophosphates?
 8 **A. There are signs and symptoms that can be**
 9 **consistent to both. I -- we agreed with this**
 10 **yesterday. There are signs and symptoms, and we**
 11 **did a whole list of heat illness and**
 12 **organophosphates. There are overlap, absolutely,**
 13 **of the symptoms.**
 14 **Q.** Dr. Dickson, I believe yesterday you
 15 testified under direct that you believe the signs
 16 and symptoms were inconsistent with
 17 organophosphates, which is why we wrote on the
 18 easel, signs and symptoms inconsistent with
 19 organophosphates; right?
 20 **A. Yes.**
 21 **Q.** That's your testimony; right?
 22 **A. Absolutely.**
 23 **Q.** Okay. So now my question is this: The
 24 jury has heard testimony from three doctors and
 25 will hear from a fourth that their opinions are

1 different from yours. I would like you to tell the
 2 jury what piece of fact or information you have
 3 that these doctors didn't?
 4 **A. I guess I'm not understanding your**
 5 **question. You're saying that the doctors --**
 6 **according to your question, do those doctors have**
 7 **information that I don't have? I don't think so.**
 8 **Is that answering your question --**
 9 **Q.** I'm asking you this question because you
 10 had speculated a number of times that perhaps these
 11 doctors don't have the big picture that you have.
 12 **A. Actually, I said when -- we talked about**
 13 **when you're seeing a patient at a certain time, for**
 14 **example, an ER doc. One of the classic problems**
 15 **with ER docs, is, if you ever heard the expression**
 16 **"Monday morning quarterbacking," you only have so**
 17 **much information when -- when you're the ER doc**
 18 **or -- and you're working through a history in a**
 19 **case with a patient, and you do the best you can.**
 20 **Now, somebody goes back and looks at this**
 21 **whole record, they get to see it all after the game**
 22 **is over. And they can say, well, it was obvious it**
 23 **was this. But at the beginning you wouldn't have**
 24 **that information.**
 25 **So what I said was maybe at the time of**

1 **their description, they didn't have all the**
 2 **information. Now, when they're making their**
 3 **decision, they should have all the same**
 4 **information.**
 5 **Q.** Okay. So it was speculation on your
 6 part, then, when these doctors testified they
 7 didn't have all the available information; correct?
 8 Let me -- let me ask you this question:
 9 You understand Dr. Mosley is the one who autopsied
 10 Ms. Neuman; right?
 11 **A. Correct.**
 12 **Q.** Do you have any evidence or any knowledge
 13 of whether or not Dr. Mosley had received all of
 14 the same information that you have?
 15 **A. I don't know what he received, but I**
 16 **assume it would be the same.**
 17 **Q.** Okay. So let's not speculate as to
 18 whether or not the doctors had information or not.
 19 Okay? What I'm asking you is this: Assuming --
 20 let's do this. It's easier.
 21 Assuming hypothetically they had the same
 22 information you had but more in the sense that
 23 Dr. Lyon --
 24 **A. I'm just trying to get -- assuming**
 25 **hypothetically that they had the same information**

1 **that I had. Okay.**

2 **Q.** Dr. Lyon did the autopsy of two
3 decedents; right?

4 **A. Okay.**

5 **Q.** Which you didn't?

6 **A. I did not.**

7 **Q.** And Dr. Mosley did the autopsy of one
8 decedent; right?

9 **A. Okay.**

10 **Q.** That you did not do?

11 **A. Correct.**

12 **Q.** Dr. Cutshall treated one of the patients
13 that died; right?

14 **A. Correct.**

15 **Q.** Including Sidney Spencer and Tess Wong;
16 right?

17 **A. Correct.**

18 **Q.** Okay. What I'd like to try and
19 understand is, since your opinion in this case is
20 so different from those three doctors, is there a
21 piece of information that you have received that
22 these doctors may not have had?

23 **MR. HUGHES:** Objection, Your Honor. Misstates
24 the totality of the other doctors' testimony.

25 **THE COURT:** Sustained.

1 **Q.** BY MS. DO: You reviewed the same
2 evidence as those doctors; right?

3 **A. I assume that -- I don't know what they**
4 **reviewed. They had the same available as I did. I**
5 **assume. You have to tell me.**

6 **Q.** And you reached a totally different
7 conclusion than them?

8 **A. Well, I don't think so.**

9 **Q.** Well, let's look up on the easel. The
10 things we wrote up there after you testified,
11 Dr. Dickson, you would agree are different; right?

12 **A. Well, you wrote is what's different. But**
13 **you're telling me that hypothetically these doctors**
14 **that presented to you -- I mean, you guys heard it,**
15 **not me -- said that these patients all had signs of**
16 **organophosphate poisoning.**

17 **Q.** Let me correct you there. I didn't say
18 all. I said signs and symptoms, specifically
19 miosis and foaming.

20 **A. Okay. Well, that's a different thing.**

21 **Q.** Well, Dr. Dickson, I'm not going to argue
22 with you, but I believe I've asked you those
23 questions.

24 Let's do this and then we're going to
25 finish. Since there are four doctors who reviewed

1 the same evidence you have, concluded they cannot
2 rule out organophosphates, the signs and symptoms,
3 specifically miosis and foaming, are consistent
4 with organophosphates, you differ with that
5 opinion. Is there any possibility that you, being
6 the outlier, is wrong?

7 **A. Well, I don't think I'm the outlier.**

8 **What you're saying is you said that they have**
9 **miosis and foaming of the mouth. And we already**
10 **discussed that those too can present in heat**
11 **illness and in organophosphate. I think we're**
12 **saying the same thing.**

13 **Q.** Okay. Then let me go with that, then.

14 You're saying now to this jury that miosis and
15 foaming is consistent with organophosphates?

16 **A. No. That's not what I said. I said that**
17 **it can present in organophosphate and heat illness.**

18 **Q.** Okay. I don't want to play semantics.

19 My question to you is, is it now your testimony
20 that miosis, pinpoint pupils, and foaming is
21 consistent with organophosphate as well as heat
22 illnesses?

23 **A. Yes.**

24 **Q.** Okay. So since it's consistent with
25 organophosphates as well as heat illnesses, you

1 can't really testify, Doctor, that the signs and
2 symptoms are all inconsistent with
3 organophosphates; correct?

4 **A. Well, yes, I can. Because it's a big**
5 **picture. That comes down to if you look at -- it's**
6 **like looking at one little speck of the big**
7 **picture. And what we discussed thoughtfully a**
8 **little while ago was what kills people with**
9 **organophosphate poisoning. And that's what --**
10 **that's what we're talking about, people that are**
11 **dying or really, really sick. And that's because**
12 **they, essentially, drown.**

13 **And when I looked at these cases, we have**
14 **several cases of people that lived and died that**
15 **were stuck on their back with a mask on their face.**
16 **Now, if you've got a mouthful of water and that's**
17 **going to keep going, you're going to kill these**
18 **patients. You're not going to help them. And**
19 **that's the big difference.**

20 **I go back to the literature. This is a**
21 **clinical diagnosis. You have to look at clinically**
22 **what the presentation was. And that -- these**
23 **people didn't have those symptoms.**

24 **So there is a lot of overlap between heat**
25 **illness and organophosphate poisoning and the flu,**

1 a million things. I mean, malaise. I feel some
2 malaise after being on the stand too long.
3 Q. Me too.
4 Dr. Dickson, let me -- let me --
5 A. Well, I just want to finish. This is
6 something we have to look at. You've got
7 overlapping -- you've got overlapping symptoms that
8 are in tons of things. And so you need to look
9 down at the big picture, what can you look
10 clinically that's going to say this is
11 organophosphates, this is something else, like heat
12 illness.

13 And these guys did a great job. They
14 even called the toxicologist. And the toxicologist
15 went with, well, it doesn't sound like
16 organophosphates. They are not --

17 Q. I'm sorry. Let me stop you there. Where
18 in the evidence do you see somebody calling a
19 toxicologist who said it's not consistent with
20 organophosphates?

21 A. Well, they said actually -- they said,
22 well, it still could be carbon monoxide poisoning.

23 Q. Dr. Dickson, you just told the jury --

24 A. Yeah.

25 Q. You just told the jury that you looked in

1 the records and you saw that they were thoughtful
2 and did a great job because they also called the
3 toxicologist who said not consistent with
4 organophosphates.

5 Show me where in the evidence that
6 appears.

7 A. No, I don't -- well, if I said that --
8 what they went with is they looked at all the
9 differential diagnosis. They looked at
10 anticholinergic. They looked at toxidromes. And
11 they called -- this is what I would do. They
12 called the specialist. Look in the book, and say,
13 well, what do you think? We've got these
14 constellation of symptoms, and we're trying to put
15 them into a box. What could it be?

16 Q. So when you just told the jury less than
17 a minute ago that you looked at the records and you
18 saw evidence they called the toxicologist who said
19 not organophosphates, that was wrong; correct?

20 A. Well, they said consider carbon monoxide.
21 So they --

22 Q. Dr. Dickson, please answer my question.

23 A. Okay.

24 Q. And then we can go to lunch.

25 A. Okay. That was wrong.

1 Q. My question is this --

2 A. I misspoke.

3 Q. It was wrong; right?

4 A. I misspoke.

5 Q. It was wrong. It's not anywhere in the
6 evidence; is that right?

7 A. Do you want me to read it to you?

8 Q. Dr. Dickson, if you believe it's in the
9 evidence where somebody called a toxicologist who
10 said it's not organophosphates, please do that.

11 A. That's not in the evidence. It says they
12 called, and they said, well, probably it sounds
13 like carbon monoxide poisoning.

14 Q. So what I'm trying to have the jury
15 understand, because it's really important,
16 especially coming from an expert trying to educate
17 the jury from what the evidence is of medical cause
18 in this case, that you be accurate; right?

19 A. Absolutely.

20 Q. That you don't overreach; right?

21 A. Absolutely.

22 Q. And that you aren't flippant in your
23 answers; right?

24 A. Definitely.

25 Q. Okay. There's nothing in the evidence

1 that supports what you just testified to --
2 correct? -- regarding a toxicologist who said it's
3 not organophosphates?

4 A. Can I read it to you?

5 Q. We're going to go back there. You just
6 told me it's not in the evidence; right?

7 A. Yes. They did not say organophosphates
8 were ruled out. They said it was likely carbon
9 monoxide could still be the possibility.

10 But what you do -- I guess it's an error
11 of omission -- you discuss what are the toxidromes,
12 and you go through them. Is it anticholinergic?
13 Is it a stimulant? Is it cholinergic? Is it
14 carbon monoxide?

15 They go through it -- and this is the way
16 it works -- and you go with, well, sounds like
17 carbon monoxide. That's the one they were going
18 with. And it was throughout the whole -- the whole
19 medical record they were thinking carbon monoxide,
20 which is a great thought. And they ruled it out.
21 And they just go through checking off the different
22 possibilities.

23 Q. Okay. Now, that we've corrected that
24 piece of testimony that was wrong, my question to
25 you is this. Okay? You reviewed hypothetically

1 everything that Dr. Mosley and Dr. Lyon had at the
2 time they reached their autopsy conclusions; right?

3 **A. Hypothetically. Yes.**

4 **Q.** Hypothetically. And you've now heard
5 hypothetically that Dr. Lyon is only certain to
6 1 percent better than a coin toss, 51/49, that it
7 was heat stroke; right?

8 **A. Okay.**

9 **Q.** Right?

10 **A. Correct. I've heard that.**

11 **Q.** And your conclusion that it's 99 percent
12 heat stroke is based on his conclusion in part;
13 right?

14 **A. In part, yes.**

15 **Q.** Okay. Same thing with Dr. Mosley and
16 Dr. Cutshall. Now, you're reviewing the same thing
17 that they have, but you've reached a very different
18 conclusion in the sense that they say they cannot
19 rule out organophosphates conclusively and that
20 there are signs and symptoms consistent with
21 organophosphates.

22 When you say somebody is "Monday
23 quarterbacking," isn't it you that's Monday
24 quarterbacking here?

25 **A. This is absolutely the -- this is the**

1 **time where you get to look at all of this. It's**
2 **all Monday morning quarterbacking.**

3 **Q.** Isn't it possible, Dr. Dickson, that the
4 doctors who treated the patients, the doctors who
5 autopsied the decedents, would actually know better
6 than somebody who's just reviewing the cold record?

7 **A. Could be.**

8 **Q.** So can you concede the possibility that
9 perhaps one doctor against four, that one doctor is
10 wrong?

11 **A. I still don't see how it's one versus**
12 **four.**

13 **Q.** Hypothetically.

14 **A. Hypothetically. Hypothetically what?**

15 **Q.** Hypothetically you're the only one with
16 this conclusion that is different from
17 Dr. Cutshall, Lyon, and Mosley?

18 **A. Hypothetically pigs can fly, but I'm not**
19 **going to concede that.**

20 **Q.** You understand in this case that certain
21 questions have to be formed in a hypothetical;
22 right?

23 **A. I'm not a lawyer. I don't know.**

24 **Q.** All right.

25 **A. I'm sorry.**

1 **Q.** I'll just represent to you that's the way
2 it's done. The jury has heard the testimony.

3 My question to you is, since you're
4 Monday quarterbacking the doctors who treated these
5 patients, who autopsied them, whose opinion that
6 was offered on the witness stand differs from
7 yours, isn't it possible that you're wrong?

8 **A. Well --**

9 **Q.** Isn't possible that you're wrong?

10 **A. That comes back to the question of**
11 **possible. When you brought that to these**
12 **patients -- these people cannot rule out**
13 **exclusively or -- is that -- what was the word you**
14 **used? These doctors could not rule out**
15 **organophosphates --**

16 **Q.** With any certainty or conclusively.

17 **A. Conclusively. I guess I'm not ruling it**
18 **out conclusively because I'm saying 99 percent of**
19 **the time. Conclusive is something that's not**
20 **available in this diagnosis. It's not.**

21 **Q.** So what you're telling the jury is that
22 it is possible that this was a case of
23 organophosphates?

24 **A. There -- there's is 99 percent sure that**
25 **it's heat illness. And there's always a 1 percent.**

1 **Q.** So you have a 1 percent possibility; is
2 that right?

3 **A. That's what I said.**

4 **Q.** Okay. Now, if these doctors who treated
5 the patient and autopsied them have a different
6 opinion, would you defer to them?

7 **A. I'd love to talk to them about it, see if**
8 **they have any --**

9 **Q.** You could have, but you didn't; right?

10 **A. I didn't know I was offered that**
11 **actually.**

12 **Q.** You didn't know you could call them?

13 **A. No idea.**

14 **Q.** Okay. So, final question, Doctor. Isn't
15 it possible, since you're Monday quarterbacking,
16 don't have the personal hands-on experience in the
17 case investigation, that you're the one who's
18 wrong?

19 **A. Again, I don't think we're on different**
20 **pages. All their evidence that I have here says**
21 **we're on the same page.**

22 **Q.** So it's possible that you're wrong?

23 **A. I'm not saying it's possible that I'm**
24 **wrong.**

25 **Q.** Okay. So we're back to you being the

1 outlier; right?

2 **A. I don't see that.**

3 **Q.** You don't see that up on the easel?

4 **A. Are we going to do this all day long?**

5 **Q.** No.

6 Right? Looking at the easel, you are the

7 outlier?

8 **A. I -- I disagree with you.**

9 **Q.** All right. Thank you, Doctor.

10 **A. Thank you.**

11 **Q.** I appreciate your patience.

12 THE COURT: Mr. Hughes.

13 MR. HUGHES: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HUGHES:

16 **Q.** Doctor, I apologize. We've got a lot of

17 ground to cover. But one thing I wanted to ask

18 before we break for lunch, you were asked some

19 questions about Mr. Ray's medical records and the

20 consultation with the toxicologist.

21 Do you recall that?

22 **A. Yes.**

23 **Q.** That was more recently. I'll kind of

24 work my way backwards.

25 **A. Okay.**

1 **Q.** Do you have the exhibit in front of you

2 that contains Dr. Ray's medical records? And I

3 know you have your own copy, but I want to find out

4 if you have the exhibit itself, which is

5 Exhibit 213.

6 MS. DO: Your Honor, at this time will counsel

7 agree to mark the CD that's dated

8 December 16th, 2010? I'd like to move it into

9 evidence.

10 MR. HUGHES: I have no objection.

11 THE COURT: Okay. If there's no objection,

12 then we'll mark that.

13 MR. HUGHES: Is this the CD you got from

14 Dr. Dickson?

15 MS. DO: Yes.

16 MR. HUGHES: Okay. I don't have any objection

17 to that.

18 THE COURT: 1017, then, will be marked and

19 admitted.

20 (Exhibit 1017 admitted.)

21 **Q.** BY MR. HUGHES: And, Doctor, would you --

22 on your copy -- is it correct your copy does not

23 have Bates numbers on the bottom corner?

24 **A. It does not.**

25 **Q.** Okay. Let me show you the record --

1 well, I'll put it up here.

2 **A. Okay.**

3 **Q.** There's multiple-page records starting

4 Bates No. 7092, which is the emergency department

5 evaluation that Ms. Do had asked you some questions

6 about.

7 **A. Yes.**

8 **Q.** Turning to the next page, which it

9 continues on to, which would be Bates No. 7093, is

10 there some discussion about contacting medical -- a

11 medical poison control?

12 **A. Yes. And this is where I came to you all**

13 **with the evidence that they were thoughtful about**

14 **this.**

15 **Q.** And I'm going to ask you a question.

16 Have you prepared similar reports to this report in

17 your career as an emergency department doctor?

18 **A. Similar reports to --**

19 **Q.** What's the purpose of preparing a report

20 like this for an emergency department doctor?

21 **A. As a medical record and as to show to the**

22 **next doctor, the ER doc. You're going to have an**

23 **admitting doctor. They want to know what happened**

24 **to get that information carried along. And then,**

25 **of course, if it ends up in a place like this, you**

1 **know what happens.**

2 **Q.** And if -- if you -- have you had the

3 opportunity in your career to speak to poison

4 control?

5 **A. Quite frequently.**

6 **Q.** And these -- what sort of a person at

7 poison control does one -- does an emergency doctor

8 speak to?

9 **A. They have a myriad of people that are**

10 **working there. Some techs, Ph.D.s. They have the**

11 **residents sometimes that are in the toxicology**

12 **fellowships. They have always had a specifically**

13 **board certified toxicologist on call to actually**

14 **discuss the case with.**

15 **Q.** And you gave the opinion that you believe

16 that the toxicologist at poison control had -- had

17 considered and ruled out that there could be some

18 sort of an organophosphate or cholinergic poisoning

19 in this case?

20 **A. Yes.**

21 **Q.** What's that opinion based upon?

22 **A. Well, it's based upon when you call the**

23 **poison control, you go through the signs and**

24 **symptoms, and you go through it with somebody who**

25 **does this all the time, and check off the boxes.**

1 **Is it anticholinergic? Well, it doesn't fit. Is**
 2 **it cholinergic? No. It doesn't fit. Is this a**
 3 **stimulant? Is it -- did they overdose on heroine?**
 4 **You go through the toxidromes with them**
 5 **to try to find a possibility to adjust your**
 6 **treatment.**

7 **Q.** And when you're preparing a report like
 8 this, would you note in the report all the
 9 toxidromes that the toxicologist and you had ruled
 10 out?

11 **A. No. You wouldn't go through them all.**

12 **Q.** What would you try and note as
 13 significant in your report?

14 **A. Mostly what their -- what the working**
 15 **diagnosis is. So, basically, well, you've gone**
 16 **through them and the most likely cause at that time**
 17 **you would go with.**

18 MS. DO: Your Honor, I have to object to this
 19 line of questioning unless it's made clear that the
 20 doctor is talking about what he would do, not what
 21 the Dr. Boyer, Arizona poison control, in fact,
 22 did.

23 THE COURT: Just to clarify the question,
 24 please, Mr. Hughes.

25 MR. HUGHES: Okay. I apologize. I thought it

1 was clear.

2 **Q.** Doctor, I'm asking in your particular
 3 case when you prepare reports such as this, do you
 4 note all the things that the -- do you put a
 5 transcript, if you would, of what you and the
 6 doctor at the poison control talk about?

7 **A. No, we don't.**

8 **Q.** What is significant for you, as an
 9 emergency department doctor, to put into an
 10 emergency department record?

11 **A. The working diagnosis.**

12 **Q.** And in this particular case -- again,
 13 referring to Bates 7093 -- does this indicate that
 14 Dr. Daniel, the emergency department doctor,
 15 considered a whole host of things, including carbon
 16 monoxide poisoning, cyanide poisoning, anoxia,
 17 hyperthermia, toxidromes?

18 **A. Yes.**

19 **Q.** And later on it talks about
 20 anticholinergic toxidrome?

21 **A. Correct.**

22 **Q.** And something about cyanide poisoning
 23 later on?

24 **A. Correct.**

25 **Q.** And this indicates -- does this indicate

1 that this -- that Dr. Daniel spoke at some length
 2 with Dr. Boyer down at the poison control?

3 MS. DO: Objection. Calls for speculation.
 4 The document speaks for itself.

5 THE COURT: It's -- it's noting a particular
 6 passage, I believe, Mr. Hughes, so --

7 MR. HUGHES: It is noting a passage. Yeah.

8 THE COURT: Overruled.

9 You may answer that, Dr. Dickson.

10 THE WITNESS: Yes. It does show that they had
 11 a good, diligent working on this patient and going
 12 through the diagnosis possibilities.

13 MR. HUGHES: Your Honor, would you like me to
 14 break here for lunch?

15 THE COURT: Yes. We'll do that.

16 Ladies and gentlemen, we'll take the noon
 17 recess. Please remember the admonition. Please be
 18 back in the jury room by 20 after -- 20 after 1:00.

19 And I'm going to ask the parties remain.

20 Dr. Dickson, you're excused at this time
 21 too.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Parties, please remain a moment.

24 (Proceedings continued outside presence
 25 of jury.)

1 MS. DO: May I raise one issue?

2 THE COURT: Yes.

3 MS. DO: Thank you.

4 That CD that we marked as an exhibit, the
 5 only thing that needs to be redacted from it is I
 6 understand that the doctor had received the medical
 7 records of Daniel P. and the witness supplements,
 8 which are all hearsay. And I didn't want to do
 9 that in front of the jury.

10 But subject to that, then, I ask the
 11 Court to receive it into evidence.

12 MR. HUGHES: Your Honor, the parties already
 13 stipulated it should be admitted as evidence. And
 14 Ms. Do had been provided a copy of the CD. One
 15 reason I agreed to have it in is it does have all
 16 the information that the doctor relied upon,
 17 including witness statements.

18 And so, again, Your Honor, Ms. Do moved
 19 the exhibit into evidence. I don't know if she's
 20 now objecting to the exhibit that she moved into
 21 evidence. But it's -- it's been admitted. And the
 22 reason I did not object to it, again, is because it
 23 contains all the information, including the witness
 24 statements, that the doctor relied upon.

25 MS. DO: Well, I think it was clear from my

1 line of questioning, Your Honor, that the reason
2 why it was relevant had to do with Stephen Ray's
3 medical records. I think that the Court does have
4 authority and discretion and the prerogative to
5 make sure that the jury doesn't get inadmissible
6 evidence.

7 And I didn't want to make that known to
8 the jury at the time that I moved it because then
9 it would essentially tell the jury that there's
10 inadmissible evidence on that CD.

11 I don't really think that Mr. Hughes is
12 trying to say now that it should go to the jury.
13 Daniel P.'s medical records are the hearsay
14 statements.

15 THE COURT: I'm going to direct the parties to
16 talk about it because that's not what I'm going to
17 talk about right now. I'll make a ruling on that
18 if you don't have it worked out. But I'll expect
19 that you would.

20 With regard to the trial days, the
21 original minute entry said June 10th. And there's
22 nine trial days, not including today, until
23 June 10th. However, when I originally had the
24 trial set and the state asked for a certain number
25 of days and I said 65, there had not been the

1 request for the hiatus that's going to start this
2 Friday.

3 So what Diane did, and I think it's quite
4 logical, is add those days back on that were -- you
5 know -- later designated as the time out of trial
6 that Mr. Li had specifically requested. I think
7 Mr. Kelly had an interest in one of the days at the
8 start.

9 And those days were just added on. When
10 they're added on, it would be until June 21st. And
11 that allows 14 days of trial going to June 20 --
12 21st.

13 We do need to address, I think, the issue
14 with -- and I'll just say that by number,
15 Juror No. 10 -- because of the specific request.
16 And I don't know what to say to that juror to get
17 your -- the note there. But I'm pretty sure -- and
18 you can verify this is -- but this is the juror who
19 during voir dire made very clear these plans were
20 made -- important plans.

21 And I'll ask for the attorneys -- I'll
22 ask Mr. Hughes and Ms. Polk. I think it should be
23 addressed. And I'll just -- I want your thoughts
24 on that. If you want to think about it and tell me
25 after -- you know -- after lunch, we can do it that

1 way. And same with the defense obviously too.

2 MR. HUGHES: Your Honor, we don't have a copy
3 of the note in front of us, but I believe the juror
4 expressed that the juror was going to be doing a --
5 what appeared to be a relatively short vacation
6 over a certain number of days.

7 THE COURT: It was the 16th and 17th, I think.
8 A Thursday and Friday of that week.

9 MR. HUGHES: And, Your Honor, I -- given the
10 fact that it is such a relatively short period of
11 time, the state would have no opposition to,
12 essentially, recessing for those two days to allow
13 the juror to -- to take the trip and then come
14 back.

15 THE COURT: Well, my thinking is the trial
16 just simply should be completed by the 21st.

17 Mr. Li.

18 MR. LI: Your Honor, we just want to get the
19 note. Let us think about it over lunch and then
20 we'll have a response.

21 Your Honor, just one quick issue while we
22 have you here. There's going to be a witness
23 that's going to testify -- Sergeant Barbaro who's
24 with the Yavapai County Sheriff's Office. He --
25 there are two issues that I've raised with Ms. Polk

1 about his anticipated testimony. One we've reached
2 agreement on, the other one I'd ask for some
3 direction from the Court.

4 The first issue that we reached agreement
5 on is apparently in his report he says something to
6 the effect of -- you know -- when he showed up at
7 the scene, he heard that Mr. Ray was sitting in his
8 room and having a sandwich or something like that.
9 That's clearly hearsay. It's also subject to 403
10 issues.

11 Ms. Polk has graciously agreed not to
12 elicit that testimony and also to instruct the
13 witness not to blurt it out. And so I would -- I
14 just want to put that on the record.

15 The other issue is apparently this
16 witness has written down that while -- when he
17 approached the scene, various of the Dream Team
18 members were in his way and not helping him and
19 impeding his progress in speaking to various other
20 participants.

21 We would move to exclude that testimony
22 because there's no evidence at all that Mr. Ray has
23 anything to do with that. In fact, Mr. Ray is not
24 on the scene at the time this witness is observing
25 this particular thing. We think it has substantial

1 403 issues.

2 It's completely irrelevant to what
3 actually happened, and it's just -- you know -- the
4 only purpose would be to intend to suggest that
5 there's some sort of malfeasance on the part of
6 Mr. Ray, who has literally nothing to do with this.

7 And maybe I've not been clear, but
8 basically --

9 THE COURT: I got the picture of what you're
10 suggesting. I think at least --

11 If I could ask Ms. Polk to address that,
12 please.

13 MS. POLK: Your Honor, what Sergeant Barbaro
14 will testify to is that when he arrived at the
15 scene, as he's trying to find out information about
16 what happened, Dream Team members and someone he
17 refers to as Jason, who I believe is Josh
18 Fredrickson -- that they are coming up and trying
19 to get people that the Sergeant is talking to,
20 they're trying to get them to go up to their room.
21 And he feels that it's interfering because he's
22 trying to get information.

23 The Court and the jury already heard
24 testimony from Debbie Mercer that the defendant --
25 as EMS was arriving, the defendant was directing

1 people to go up to their room. This information is
2 consistent with what the jury has already heard.

3 And it's going to be the Sergeant's
4 testimony simply that when he's trying to talk to
5 these people, that people in blue shirts are coming
6 up and trying to get participants to go up to their
7 room.

8 MR. LI: And -- and the objection is that
9 there's some suggestion of some kind of obstructive
10 behavior. And that's -- I mean, when -- when we
11 interviewed him a few Fridays ago, it wasn't -- the
12 testimony was not simply just the way Ms. Polk is
13 laying it out there. It was a little more
14 suggestion of -- you know -- obstructive behavior.

15 And assuming for a second that any of
16 this is true, which we don't concede, but even if
17 it were true, there's no possible way that
18 particular behavior can be attributed to Mr. Ray
19 who, by this own witness's testimony, is not at
20 the -- at the site at the time this guy arrives.

21 So any information that he would have
22 about that is either speculative or based on some
23 sort of hearsay. Any information that would
24 attribute any of that alleged behavior to Mr. Ray
25 would be hearsay or speculative.

1 And because of that, the 403 concerns
2 are -- are extraordinary important because it does
3 suggest that there's some attempt to obstruct
4 this -- this person -- this detective from
5 conducting his investigation.

6 MS. POLK: Your Honor, the facts are the
7 facts. The jury has already heard that Mr. Ray
8 instructed participants who could to get up to
9 their rooms. And what they'll hear from the
10 Sergeant is, essentially, the same thing.

11 When he's trying to interview
12 participants, that people in blue shirts are coming
13 up and trying to get them to go up to their rooms.

14 He did feel that they were obstructing.
15 And he also -- Josh -- this person named Jason, who
16 the jury will hear a little bit more about, also
17 was following the -- Sergeant Barbaro around.
18 Sergeant Barbaro will testify he turned around,
19 this person named Jason was right there until he
20 finally had to tell Jason to back off so that he
21 could do his job.

22 THE COURT: And how would that relate to basic
23 issues of causation and how everything happened?
24 I -- I've indicated before in terms of testimony
25 regarding Mr. Ray and as the incident actually was

1 completing -- I mean, through the whole incident,
2 just testimony describing the -- the scene, the --
3 how -- how people described demeanor with regard to
4 Mr. Ray, those kinds of things being pertinent.

5 But the relevance for actual causation
6 and having proof of the offense post -- in this
7 case, essentially, postincident -- and I know the
8 incident is -- the way I've described it includes
9 that. But the effect might be more postincident
10 conduct that isn't even Mr. Ray's apparently. So
11 that -- that's -- that's the relevant concern,
12 Ms. Polk.

13 I mean, I do have an interest in having
14 the jury get an understanding of what happened. I
15 think that's important in any case. But this I'm
16 having some trouble with when it's not -- it's --
17 what I'm hearing. I'm just going with how the
18 evidence is being relayed to me. It's not being
19 something right from Mr. Ray. And then you get
20 into that danger of the jury taking it that way.

21 So if you'd address that, please.

22 MS. POLK: Your Honor, first of all, this is
23 one -- this is one of the first representatives
24 from the sheriff's office to arrive at the scene.
25 This is not after. This is the scene is still

1 going on.

2 And what the jury has already heard is
3 that Mr. Ray told participants to go back to their
4 room. The Dream Team members -- Mr. Ray then goes
5 back to his room. And the Dream Team members then
6 are trying to get participants to go back to their
7 room.

8 So it's not -- it corroborates what the
9 testimony of a witness, that Mr. Ray had instructed
10 people to go back to their room. And it just is
11 what's happening at the scene.

12 This is an officer who's trying to find
13 out what happened, trying to triage, trying to
14 figure out how to get information out there to --
15 to first responders who need the information. And
16 the people he's trying to talk to are being told to
17 go back to their room.

18 MR. LI: Your Honor, just --

19 MS. POLK: It's relevant -- it's the scene.
20 It's relevant simply because it is the scene. And
21 then it's also relevant because it goes to the --
22 the -- again, what the jury has already heard is
23 that Mr. Ray is telling people to leave this scene
24 as first responders and law enforcement is
25 arriving.

1 MR. LI: Your Honor, just for the record, the
2 Sergeant arrives almost an hour after 9-1-1 is
3 called. And there are other detectives on scene,
4 and the EMTs have been there, I believe, since I
5 think 5:22 or something like that. They've been
6 there for quite some time. Some people have even
7 been transported from the scene.

8 As the Court may recall -- what I'm
9 concerned about is this: It's entirely possible
10 that somebody would say, hey, look. Everybody
11 who's not sick, get off the scene so that the EMTs
12 can do their work. That's a completely normal --

13 THE COURT: And that's really a different
14 issue. It's the -- he believed it was obstructing.
15 I mean, that's the problem with the -- with the
16 testimony. And to try to convey that and then it
17 would not be, as I said, directly from Mr. Ray in
18 any event from what I'm hearing.

19 All right. The first interview was done
20 just recently? Is that --

21 MR. LI: That's correct. I mean, it's in his
22 report, though. This is in his report. And -- and
23 listen, Your Honor, we would -- there were, I
24 think, 200 some-odd witnesses at -- at various
25 times. I think at times --

1 THE COURT: I'm not -- I'm just wondering when
2 this all came about, when the -- when the issue
3 arises.

4 MR. LI: Some of these issues, Your Honor, to
5 be perfectly honest, we don't want to deluge the
6 Court with endless amounts of paper. Some of --
7 you know -- on the more substantive issues that we
8 feel have to do with the constitutional issues and
9 what have you that we've been arguing in the
10 courtroom, we want to put in writing. But some of
11 these issues seem to be fairly straightforward
12 evidentiary rules.

13 And on this one, the reality of it is
14 there's no evidence Mr. Ray has anything to do with
15 these purported conversations or this detective --
16 or this Sergeant's feeling that there was
17 obstructive behavior.

18 And then, secondly -- you know -- he's --
19 he's not even at the scene.

20 THE COURT: Here's the -- here's the ruling:

21 There have been suggestions that the
22 investigation was not proper, however you want to
23 phrase it, or wasn't done completely. What has to
24 be avoided is any suggestion that -- or just
25 speculation that somehow obstructing. But if there

1 is real evidence -- I'm talking about 602, personal
2 knowledge evidence, as someone is coming up to do
3 an interview and somebody else is asking to go to
4 the room and it's just presented factually, that
5 can be done.

6 If there's some suggestion -- and I think
7 it's a fairly serious matter, Mr. LI. If it goes
8 further say -- and the witness were to say, oh,
9 this person was obstructing me, like that, just
10 make that leap, that could be a real problem.

11 MR. LI: Problem for who, Your Honor?

12 THE COURT: For the state.

13 MR. LI: For the state.

14 THE COURT: Were to suggest that --

15 MR. LI: Mistrial.

16 THE COURT: I'm saying it could be -- yes. I
17 mean, when you talk about real problems, that's
18 one --

19 MR. LI: I just want to make sure.

20 THE COURT: But in terms of describing what's
21 happening and trying to investigate, and if it's
22 made clear and if there's -- if there's a
23 suggestion that it's coming from Mr. Ray when
24 there's not that kind of evidence, those kinds of
25 things can present real issues. I'm saying that.

1 But when people are arriving at the scene
2 and they're investigating and things happen, how
3 can you not present a factual story to the jury?

4 MR. LI: Because -- Your Honor, because all
5 this guy does is he, basically, sets out the
6 perimeter and he tries to figure out what's going
7 on. And he directs people in various -- you
8 know -- directs police officers to do various
9 things.

10 So it's not that he's -- there's no
11 relevance in particular of whatever. He also takes
12 the statements from Mr. Ray. And -- and they're
13 going to make some suggestion that Mr. Ray was not
14 being truthful to him. But, in fact, that's not
15 the case.

16 So -- so they have test -- there's no
17 relevance to what the Dream Team members are doing.
18 There's no -- there's no relevance at all. And the
19 risk, Your Honor, is just the prejudice. Because
20 even if we carefully craft this sort of set of
21 questions to bring out -- to elicit this sort of
22 evidence, the suggestion will hang in the air that
23 somehow Mr. Ray had any responsibility for that,
24 which he doesn't.

25 THE COURT: And you raise a defense. Part of

1 the defense is the investigation, what's getting
2 done in getting in the investigation. And you talk
3 about crafting. And I -- you know -- I said many
4 times, like any judge would, you want relevant,
5 admissible evidence to go to the jury for them to
6 make their decision.

7 To just leave that out as part of the
8 picture, I don't know that that's -- that's correct
9 either.

10 MR. LI: But I don't under -- Your Honor, with
11 all due respect.

12 THE COURT: Don't worry --

13 MR. LI: I don't understand what the
14 relevance --

15 THE COURT: Let's not talk over each other.
16 Mina's had a long day already.

17 MR. LI: I simply do not understand the
18 relevance of what the Dream Team members are doing.
19 Obviously the state through their detectives were
20 able to take mass statements from everybody, both
21 at the scene, they organized them up into the
22 dining hall. They did all of those sorts of
23 things.

24 The issues that we've had with the
25 investigation, Your Honor -- I mean, I think it's

1 been fairly straightforward -- have been forensic
2 issues. And you didn't follow up on various clues
3 that were present at various times. It's not that
4 you didn't interview 200, 300 people. They did
5 interview 200, 300 people. Detective Diskin on the
6 stand said he did several hundred hours worth of
7 interviews.

8 The point is that this will hang in the
9 air as if the Dream Team members were, one, trying
10 to obstruct; and, two, that Mr. Ray had something
11 to do with that. He didn't. It's entirely normal,
12 Your Honor.

13 If there's a casualty incident, and
14 people who are hurt and people who are not hurt, to
15 send the people who are not hurt away from the area
16 where the people are hurt.

17 We don't want to look -- you know --
18 people hanging over a medical scene. Let the --
19 let the medical folks do what they're supposed to
20 do.

21 The problem is that the state has
22 insinuated that somehow this was an effort to -- to
23 go -- you know -- hide people. Where are they
24 going to go?

25 THE COURT: If the state characterizes it in

1 that fashion, that -- that's a problem. They're
2 not saying they're going to do that. As I
3 understand it, Ms. Polk presented factually.

4 Is that correct?

5 MS. POLK: Yes, Your Honor.

6 THE COURT: So that's the ruling.

7 Thank you.

8 (Recess.)

9 (Proceedings continued in the presence of
10 jury.)

11 THE COURT: The record will show the
12 presence of Mr. Ray, the attorneys, and the jury.
13 Dr. Dickson has returned to the stand.

14 Mr. Hughes.

15 MR. HUGHES: Thank you.

16 Q. Good afternoon, Doctor. You were asked a
17 couple questions by Ms. Do regarding -- you were
18 asked some questions about your qualifications and
19 asked, excluding the moonlighting that you'd done,
20 the -- the live patients that you've treated in
21 Yuma was from 2004 to the present date. Is that
22 correct?

23 A. Correct.

24 Q. What did you mean by "moonlighting"?

25 A. Moonlighting is when you are in

1 **residency. You are a licensed physician, but**
 2 **you're not board certified. And there are places**
 3 **that allow you to work there, I guess, to make a**
 4 **little money as a side job.**

5 **As a resident you're underpaid and**
 6 **overworked. And it's nice to make money on the**
 7 **side. And that's what I did.**

8 **Q.** And can you tell us where you
 9 moonlighted.

10 **A.** **The emergency department was Tulare**
 11 **Regional Medical Center in Tulare, California.**

12 **Q.** And what did you do at the medical center
 13 in Tulare?

14 **A.** **The attending emergency medicine doctor.**

15 **Q.** And how long did you do that for?

16 **A.** **I did that for my fourth year of**
 17 **residency, so 2003 to 2004.**

18 **Q.** And you were asked about whether you had
 19 experience in forensic pathology. And you
 20 mentioned something about nonforensic pathology.
 21 Can you tell us what the difference is between
 22 those two.

23 **A.** **That's a good question. I mean, we take**
 24 **pathology rotations, meaning we spend a month in**
 25 **medical school working with pathologists doing**

1 **autopsies, looking at microscopes. Pathology**
 2 **involves more than autopsies. It's looking at**
 3 **slides. People that have things like cancers, if**
 4 **they surgically have them removed, we look at it**
 5 **under the slide to see if a mass is cancerous or**
 6 **not.**

7 **That's the type of pathology -- I guess**
 8 **it would be called "clinical pathology" than**
 9 **forensic, which is different.**

10 **Q.** And Ms. Do had asked you if you would --
 11 in determining the cause of death if you would
 12 defer to medical examiners. Do you remember being
 13 asked that?

14 **A.** **Yes.**

15 **Q.** Now, assuming a medical examiner's
 16 testified that in cases involving heat stroke
 17 there's no specific finding that you would find in
 18 an autopsy to determine heat -- death by heat
 19 stroke.

20 **Assuming they testified that they would**
 21 **look at the surrounding medical records and the**
 22 **facts and circumstances surrounding the exposure to**
 23 **whatever caused the illness, is that something**
 24 **similar to what you would do or what you did in**
 25 **this case to determining cause of death for**

1 Ms. Neuman, Ms. Brown, and Mr. Shore?

2 **A.** **Yes.**

3 **Q.** And you were asked a question about
 4 doctors having the advantage of having had hands on
 5 the patient.

6 Do you recall that?

7 **A.** **Yes.**

8 **Q.** And in this particular case, is it
 9 correct that you did not personally treat any of
 10 the 18 people who went to any of the -- the
 11 hospitals in this case?

12 **A.** **That is correct.**

13 **Q.** Did you have the opportunity, though, of
 14 reviewing the medical records of all those 18
 15 people?

16 **A.** **Yes.**

17 **Q.** Do you know if Dr. Cutshall reviewed
 18 the -- the emergency doctor from the -- the
 19 hospital. Do you know if he had the opportunity of
 20 reviewing the medical records for all the 18
 21 patients?

22 **A.** **I don't know.**

23 **Q.** Do you know -- if Dr. Lyon, for example,
 24 testified that he hadn't looked at the medical
 25 records of anybody other than the -- the patients

1 he did the autopsies on, would you believe that you
 2 would be at -- at least as good if not a better
 3 physician as Dr. Lyon in determining cause of death
 4 in this case?

5 **A.** **We talked a little earlier. This is a**
 6 **clinical diagnosis. There isn't a test for -- for**
 7 **heat illness. That's something you got to look at**
 8 **the physical presentation. So I would say yes.**

9 **Q.** And if Dr. Mosley testified he looked at
 10 the medical records of Ms. Neuman and maybe one or
 11 two other patients, would you have the same
 12 opinion?

13 **A.** **Yes.**

14 **Q.** You were asked about being retained in
 15 this case. Did you enter into a retainer
 16 agreement?

17 **A.** **Yes.**

18 **Q.** And did the agreement specify whether or
 19 not you were to reach an independent conclusion in
 20 the case?

21 **A.** **Yes. It said for me to come up with an**
 22 **independent conclusion.**

23 **Q.** Did anybody suggest to you what opinion
 24 you should make in this case?

25 **A.** **No.**

1 Q. Would you have -- would you have followed
2 such a suggestion if it had been made?

3 A. No.

4 Q. You were asked some questions about a
5 difference of opinion that -- between Dr. Lyon and
6 Dr. Mosley as to whether to call deaths as a result
7 of heat stroke versus hyperthermia.

8 A. Uh-huh.

9 Q. Would that semantical difference affect
10 your opinion in the case?

11 A. No.

12 Q. Can you -- do you -- do you see a
13 difference between hyperthermia and heat stroke
14 with respect to cause of death?

15 A. In this case, no.

16 Q. You were asked whether you would refer --
17 defer to Dr. Paul, a person who may testify for the
18 defendant. Were you asked about that?

19 A. Yes.

20 Q. If Dr. Paul were to testify that he's
21 never actually treated a patient who had heat
22 stroke, is that something you would consider in
23 determining whether you would defer to him or not?

24 A. Yes.

25 Q. And you talked a little bit about

1 Dr. Paul's report. And I believe you told Ms. Do
2 that you believed it showed a misunderstanding of
3 heat stroke.

4 A. Yes.

5 Q. And I think you -- you wanted to get back
6 to that topic. Can you explain your opinion as to
7 what the misunderstanding was or why you made that
8 statement?

9 A. Yes. In his report -- I can read it
10 verbatim if you'd like. But it went to discussing
11 heat stroke. He broke up heat exhaustion and heat
12 stroke, like we had talked about. But he put into
13 his pile of mild symptoms people being -- having
14 syncope. Syncope is when you pass out.

15 If any of you all of a sudden were
16 unconscious, I would definitely not consider that a
17 mild symptom, the change in mental status.
18 Understanding that line of heat exhaustion to heat
19 stroke is crossed when you start having that change
20 in mental status. And that's the key in that.
21 That's one area where it was quite clear his
22 understanding of -- of heat illness is inadequate.

23 My other concern is -- we've already
24 brought this up. It's temperature. Patients, as
25 we talked before, cool quickly. We all cool

1 quickly. But there's a stick of a number. And we
2 talked a little about whether it's 104 or 106.
3 That number is, as we talked about, a rectal
4 temperature and that -- don't have to have that
5 number to make the diagnosis.

6 And those are two of the big things that
7 are concerning in his report of his understanding
8 of heat illness.

9 Q. And can you explain why it is you don't
10 have to have that number to make a diagnosis.

11 A. Well, that's the thing is people cool off
12 quickly. When we try to cool people down in the
13 emergency department, we put them in a cool
14 environment, basically, less than 70 degrees. We
15 wet them down, and their temperatures drop
16 dramatically, a degree centigrade every five
17 minutes.

18 So what you find in these patients is
19 that most of the time when you get -- by the time
20 they get to our emergency department, they're cool,
21 if not actually hypothermic. They're actually
22 cold.

23 The ones that are still have any warmth,
24 even 101, for example, 102, that's a bad sign.
25 Because they've actually -- they're still warm

1 despite the, whatever, hour, half hour it takes to
2 get to you.

3 So that's where it would be foolhardy to
4 not treat somebody for heat illness or heat stroke
5 based on their temperature alone. You've got to
6 look at the whole picture. You've got to think,
7 well, were they out in the heat? Were they having
8 these signs and symptoms? Well, it's been an hour,
9 and their temperature is now normal. Could I just
10 pretend that doesn't exist? No. That's a --
11 that's a pitfall that a physician can make if you
12 don't consider that.

13 Q. In your reports did you take into account
14 the air temperature that was documented from
15 Angel Valley?

16 A. Yes.

17 Q. And what was your opinion about how the
18 air temperature that day could affect the cooling
19 of a patient?

20 A. I think that height of the temperature
21 was 70 degrees that day. That was as hot as it
22 got. And that's a huge thing. It means you're
23 going from whatever heat inside to 70 degrees
24 outside.

25 So now those mechanisms that we have to

1 cool ourselves all work great. You've got
2 everything working in your advantage to cool off.
3 If you go from a hot area to something less than --
4 than your temperature, less than 98.6, you got that
5 nice gradient. 70 degrees, you're at 98.6, you're
6 going to cool down.

7 Q. And Ms. Do asked if after -- did -- did
8 Dr. Paul's report go into detail or explain the
9 significance of a patient cooling from the time of
10 exposure to the heat until the time of presentation
11 at the emergency department?

12 A. Not that I remember.

13 Q. After reading Dr. Paul's report, did you
14 then amend your report?

15 A. I did.

16 Q. And how is it that you amended the
17 report?

18 A. I added a paragraph discussing what we
19 just talked about of the temperature being not 104,
20 106, whatever number you like to use, does not
21 preclude the diagnosis. And it actually is very
22 common, if not more common, to have people that are
23 normal temperature or maybe just a little high or
24 low by the time they get to the emergency
25 department. And cooling happens really, really

1 quickly.

2 Q. And Ms. Do asked a number of questions
3 about the report by Dawn Sy, which is Exhibit 345.
4 Do you remember being asked some of those
5 questions?

6 A. Yes.

7 Q. And did you receive this report after you
8 had prepared your report in January?

9 A. Yes.

10 Q. Did Ms. Sy's report change your opinion
11 as to the cause of death for Ms. Neuman, Ms. Brown,
12 or Mr. Shore?

13 A. No, it did not.

14 Q. And why is that?

15 A. Why is that? Because these -- from my
16 readings and what I've read to you, these chemicals
17 are not present in a toxic level. And the studies
18 that will show don't show that they would hurt you
19 at those levels.

20 Q. And you were asked some questions about
21 Mr. Shore's medical records. And I'll get to those
22 in a couple minutes. Ms. Do asked you about the
23 material -- is it material safety data sheets, the
24 MSDS?

25 A. Yes.

1 Q. That you told us about yesterday when you
2 were testifying about the different chemicals noted
3 in Ms. Sy's report?

4 A. Yes.

5 Q. Where is the source of those MSDS that
6 you reviewed?

7 A. I got them off the internet.

8 Q. And is that -- are there places on the
9 internet that compile MSDS sheets for various
10 chemicals?

11 A. Yes.

12 Q. Is that the -- is that a place -- is it
13 or is it not a place where you would find MSDS for
14 your work in the emergency department?

15 A. Absolutely.

16 Q. You were asked -- I believe Ms. Do went
17 through some of the MSDS sheets for these
18 particular chemicals. Do you remember that?

19 A. Yes.

20 Q. Does the -- one of the MSDS sheets for
21 this 2-ethyl-1-hexonal, does -- does the MSDS sheet
22 actually refer to a human study where the chemical
23 was sprayed into people's eyes?

24 A. I have to look at it again. I don't
25 remember off the top of my head.

1 Q. Do you have that with you?

2 A. I do.

3 2-ethyl-1-hexonal, is that what we're
4 talking about?

5 Q. Yes.

6 A. Okay. Talks about eye irritation,
7 exposure to rats, studies of eye irritation by
8 measuring eye blink rates in human volunteers --
9 the volunteers and sprayed some stuff at them and
10 said how much did they blink for four hours at a
11 constant air levels of this 2-ethyl-hexonal of
12 either 1.5 parts per million, 10 parts per million,
13 or 20 parts per million or variable levels with 20
14 parts per million or 40 parts per million.

15 And it showed a dose-related increase in
16 eye irritation. So the more they sprayed in their
17 eye, they irritated their eyes.

18 Q. Doctor, assuming in the -- this
19 particular report by Ms. Sy indicates that
20 volatiles were detected in a number of these
21 particular items.

22 Do you see that?

23 A. Correct.

24 Q. And we'll go through the items. The 305
25 and 345, those are rocks. Would you agree with me?

1 **A. 305 and 345 are rocks. Yes.**
 2 **Q.** And 356 and 358 are cans containing
 3 tarps?
 4 **A. Correct.**
 5 **Q.** And then 500, 502, 562, and 564. Do you
 6 agree with me those would be cans containing pieces
 7 of wood?
 8 **A. Yes.**
 9 **Q.** Now, if -- with respect to the tarps,
 10 this indicates that they were heated to 95 degrees
 11 centigrade for eight hours.
 12 **A. Correct.**
 13 **Q.** If the witnesses testified that the tarps
 14 never got hot to the touch, would you believe that
 15 to be an accurate testing to determine what
 16 chemicals could be put off by the tarps?
 17 MS. DO: Objection, Your Honor. Foundation.
 18 THE COURT: Sustained as to foundation.
 19 **Q.** BY MR. HUGHES: How hot is 95 degrees
 20 centigrade?
 21 **A. Really, really hot. A hundred degrees**
 22 **centigrade is boiling, so it's just below boiling**
 23 **point.**
 24 **Q.** You were asked whether at the time you
 25 prepared the report you had heard that statement

1 from the unknown person that -- that he thought the
 2 possibility could be organophosphates and maybe
 3 carbon monoxide.
 4 Do you remember being asked that?
 5 **A. Yes.**
 6 **Q.** Would that statement by this unknown
 7 person have changed your opinion?
 8 **A. I got to get the question again. So**
 9 **there's an unknown person.**
 10 **Q.** Ms. Do read you a statement --
 11 **A. Yes.**
 12 **Q.** -- that said something along the lines
 13 of, it could be carbon monoxide with maybe a little
 14 organophosphates maybe mixed in. And then it went
 15 on to talk about some of the signs and symptoms
 16 people should be on the lookout.
 17 Do you recall that statement being read
 18 to you?
 19 **A. I actually don't. I'm sorry.**
 20 **Q.** Okay. Would -- assuming that
 21 hypothetically that statement had been read to
 22 you --
 23 **A. Okay.**
 24 **Q.** -- would --
 25 MS. DO: Your Honor, I'd object. I did not

1 read the statement. I -- I didn't read the
 2 statement. If we want to play it so that we have
 3 it accurate.
 4 THE COURT: Would you like to play it?
 5 MR. HUGHES: Your Honor, I believe she did
 6 read it.
 7 **Q.** But assuming a statement along those
 8 lines was given to you yesterday, would that change
 9 your opinion?
 10 **A. No.**
 11 **Q.** Why is that?
 12 **A. Well, it goes back to the big picture**
 13 **here. You've got to look at all the different**
 14 **toxidromes and what they looked through -- whether**
 15 **it's carbon monoxide, whether it's**
 16 **organophosphates, whether it's heat illness,**
 17 **whether it's amphetamines, whatever it could be.**
 18 **And you've got to rule them out as you go and go**
 19 **down the path that looks most likely at the big**
 20 **picture.**
 21 **Q.** And Ms. Do asked you some questions about
 22 Exhibit 1014, which is an EPA document pertaining
 23 to 2-ethyl-1-hexonal. Do you remember being asked
 24 about that?
 25 **A. I do.**

1 **Q.** I think she asked you about -- under use
 2 information, she asked you about the section
 3 involving pesticides.
 4 Do you remember being asked about that?
 5 **A. Yes.**
 6 **Q.** Do you know whether the report documents
 7 other uses that this particular chemical could be
 8 found in?
 9 **A. I don't know.**
 10 **Q.** And showing you page 4, would it surprise
 11 you that if you heat tarps up that you would find a
 12 chemical used to make soft polyvinyl chloride?
 13 MS. DO: Objection, Your Honor. Foundation.
 14 THE COURT: Sustained.
 15 **Q.** BY MR. HUGHES: Doctor, if you had this
 16 information available to you and a patient were to
 17 present himself in the emergency department, would
 18 it -- would the existence of this chemical in trace
 19 amounts surprise you if you knew that there were
 20 hot tarps?
 21 MS. DO: Same objection, Your Honor.
 22 THE COURT: Overruled.
 23 If you can answer that, you may.
 24 THE WITNESS: If the question is if somebody
 25 presented to the emergency department and they

1 found that chemical in trace amounts in heated
2 tarps, no. That would not surprise me after
3 reading this.

4 **Q.** BY MR. HUGHES: And if you later were to
5 learn the tarps didn't get hot to the touch, would
6 that, then, be a factor that you would consider in
7 determining whether your patient was presenting for
8 exposure to 2-EH or for some other reason?

9 **A. Yes. That would be a factor.**

10 **Q.** You were asked some questions about --
11 you were asked questions about the verbiage for the
12 words that you used in your report.

13 Do you remember being asked those?

14 **A. Yes.**

15 **Q.** Shortly after preparing your report, did
16 you give an interview to Ms. Do and the state?

17 **A. Yes.**

18 **Q.** During the interview did you talk about
19 the sources where your opinion came from?

20 **A. Yes.**

21 **Q.** And shortly after that did you provide
22 Ms. Do and the state with the actual copies of
23 where those sources came from?

24 **A. Yes.**

25 **Q.** And does those sources include the

1 eMedicine article that Ms. Do compared to your
2 report? Is that correct?

3 **A. Yes.**

4 **Q.** Ms. Do asked you some questions about
5 whether other doctors had an opinion as to could
6 heat stroke cause miosis.

7 Do you remember being asked about that?

8 **A. Yes.**

9 **Q.** What's your basis for believing that heat
10 stroke can cause miosis?

11 **A. It's out of the literature in that**
12 **eMedicine article. It says can cause -- we talked**
13 **about this -- big pupils, little pupils, or normal**
14 **pupils.**

15 **Q.** And when was that article written?

16 **A. It was last updated in 2010. I have to**
17 **look.**

18 **Q.** You said, big pupils, little pupils.
19 Would you have any reason to dispute the article
20 says the pupils may be fixed, dilated, pinpoint, or
21 normal?

22 **A. No. I would not dispute that.**

23 MS. DO: And so the record is clear, is this
24 the eMedicine article?

25 **Q.** BY MR. HUGHES: Doctor --

1 THE COURT: Mr. Hughes, since you did read
2 that, what was the -- where were you reading from?

3 MR. HUGHES: This is the article titled, "Heat
4 Stroke, Clinical Presentation" by Robert S.
5 Helman, MD; chief editor, Rick Kulkami, MD, (sic).
6 And it says, updated October 26, 2010.

7 MS. DO: From eMedicine.

8 **Q.** BY MR. HUGHES: Doctor, let me ask you
9 about -- is -- are there two phases, if you will,
10 or -- or two parts to eMedicine?

11 **A. Two phases?**

12 **Q.** That's not a good question.

13 Does eMedicine have a point of access for
14 laypeople to get information?

15 **A. I believe it does.**

16 **Q.** And does it have a separate point of
17 access for medical doctors to get information?

18 **A. Yes, it does.**

19 **Q.** Which part of eMedicine's website do you
20 utilize?

21 **A. The doctor portion. That's where I get**
22 **my email through, all through that server.**

23 **Q.** And on that -- the doctor portion of
24 eMedicine, what sort of articles are presented?

25 **A. You -- you name it. I mean, it's all**

1 **through to the medical literature. One of the**
2 **reasons I like it more -- it's not that I don't**
3 **like the other ones. They're all very good too,**
4 **but they're updated frequently. Medicine is**
5 **changing at a very scary, rapid pace. And to keep**
6 **up with it, there's new things you've got to always**
7 **be up on.**

8 **And textbooks -- unfortunately, say a**
9 **textbook came out in 2006 or 2008, the articles**
10 **that are in there are -- you know -- three to four**
11 **years behind that. So it's a -- it's a great**
12 **resource to get the most up-to-date information.**

13 **Q.** Would it surprise you if during an
14 interview Dr. Paul indicated he gets information
15 from eMedicine also?

16 **A. No, it wouldn't.**

17 **Q.** Do you know whether this eMedicine is a
18 common source that's relied upon by experts in your
19 field for medical information?

20 **A. We all used it in our residency, and I**
21 **continue to use it with the other physicians in my**
22 **department.**

23 **Q.** And you were asked some questions about
24 this eMedicine article -- did you -- on heat
25 stroke. Did you review other articles in addition

1 to this article by Dr. Robert S. Henman and
2 Dr. Rick Kulkarni called, "Heat Stroke, Clinical
3 Presentation"?

4 **A. Yes.**

5 **Q.** What other sources of information did you
6 also review?

7 **A. I read lots and lots on heat stroke and**
8 **heat illness. One of the ones that I put down**
9 **there is Tintinalli. It's one of the textbooks**
10 **that teach emergency medicine.**

11 **Q.** Did you provide copies of that?

12 **A. I did.**

13 **Q.** Are there any other articles that you
14 relied upon?

15 **A. I put one in from the Mayo Clinic. They**
16 **do a -- it's one more for nonphysicians. We talked**
17 **little earlier. I like to see what was presented**
18 **for my patients in -- from the nonmedical point of**
19 **view. And it does a nice talk on heat illness,**
20 **what the signs and symptoms are, in a nice, easily**
21 **understood way. So I put that as well.**

22 **And then I also put a reference into**
23 **the -- that article that we talked about where**
24 **using the tympanic, or the ear, thermometer versus**
25 **the core temperature of the rectal thermometer. It**

1 showed it doesn't really correlate very well.

2 **The -- the temperature is --**
3 **unfortunately the ear probe doesn't work as well in**
4 **people when they're cooling down as the -- as**
5 **the -- a core temperature. Showing more the -- how**
6 **it's not reliable to use this temperature as a --**
7 **as a diagnosis of heat stroke.**

8 **Q.** And the article you're referring to -- is
9 that titled, "Comparison of Rectal and Tympanic
10 Thermometry During Exercise"?

11 **A. That's it.**

12 **Q.** By a -- someone named Katherine Newsham,
13 MA, ATC, and Jan Saunders, DO, and Eric S.
14 Nordin, DO?

15 **A. Correct.**

16 **Q.** Did you also, then, review some articles
17 regarding organophosphates?

18 **A. Yes.**

19 **Q.** And what was the source for the
20 organophosphates article?

21 **A. eMedicine.**

22 **Q.** Is one of the articles you reviewed
23 called, Organophosphate Toxicity?

24 **A. Yes.**

25 **Q.** By a Kenneth D. Katz, MD, FAAEM, ABMT?

1 **A. Yes.**

2 **Q.** What are -- what are -- do you know what
3 those initials mean after the name?

4 **A. It's a fellow of the American Academy of**
5 **Emergency Medicine, one of those two.**

6 **What was the other one?**

7 **Q.** ABMT?

8 **A. ABMT. I bet he was American -- maybe**
9 **basic -- I don't know.**

10 **Q.** I'm sorry. ABM, like mountain, T,
11 like --

12 **A. I -- I don't know what that one is for.**

13 **Q.** And then chief editor, Michael R. Pinsky,
14 MD, CM, FCCP, FCCM. Do you know what any of those
15 initials mean?

16 **A. That's a lot of initials. No. I**
17 **couldn't tell you what they all are.**

18 **Q.** Okay. In addition to the organophosphate
19 toxicity article by those authors, did you review
20 one called, "Organophosphate Toxicity Clinical
21 Presentation"?

22 **A. Well, what that is is it's broken up.**
23 **That is all the same article. And, basically, it's**
24 **organophosphate. It talks about the initial**
25 **history. Then it talks about the clinical**

1 **presentation. Then it talks about the**
2 **pathophysiology. It breaks it down into nice**
3 **sections, physical exam findings. But it's all**
4 **part of the same, large article.**

5 **Q.** And Ms. Do asked you some questions about
6 mnemonics. Do you remember that?

7 **A. Mnemonics. Yes.**

8 **Q.** She was asked -- she asked you on this
9 DUMBELL whether you were right or wrong about
10 including bradycardia?

11 **A. Okay.**

12 **Q.** Do you remember being asked that?

13 **A. I do.**

14 **Q.** Do you know if this article,
15 "Organophosphate Toxicity, Clinical Presentation,"
16 actually references the mnemonic SLUDGE and then
17 the one called "DUMBELLS"?

18 **A. Yeah. I believe it does.**

19 **Q.** And what are the -- the -- according to
20 this article, what are the -- the -- what does the
21 "B" stands for?

22 **A. Bradycardia. Are we talking about this**
23 **one under DUMBELLS?**

24 **Q.** Under DUMBELLS.

25 **A. Yeah. I believe it's bradycardia or**

1 **bronchorrhea. Shall we look?**

2 **Q.** Do you have the copy in front of you?

3 **A.** I do.

4 **Q.** And, again, I'm referring to the -- the
5 section, I suppose, called, "Organophosphate
6 Toxicity, Clinical Presentation."

7 **A.** It lists three actually. Bradycardia,
8 bronchospasm, and bronchorrhea.

9 **Q.** And what, again, does bradycardia stand
10 for?

11 **A.** Slow heart rate.

12 **Q.** You were asked some questions by Ms. Do
13 about your report for Ms. Neuman. Do you remember
14 being asked some questions about Ms. Neuman's
15 report?

16 **A.** Yes.

17 **Q.** And in particular she asked you about
18 cerebral edema, that your statement in the report,
19 cerebral edema and herniation also may occur during
20 the course of heat stroke.

21 **A.** Yes.

22 **Q.** Can you explain -- that was an area I
23 think you wanted to get back to. Can you explain
24 what you mean by, cerebral edema and herniation
25 also may occur during the course of heat stroke?

1 **A.** Cerebral edema is the brain swells. If
2 your arm swells, there's lots of room for it to
3 swell. If your brain swells, you got a skull
4 that's not going to let it go anywhere. There's
5 only one place for it to go. At the base of your
6 skull is a hole where your spinal cord comes out.

7 And what'll happen is the swelling gets
8 so much, so much pressure, that the brain pushes
9 through that hole or herniates, just like a
10 hernia if you have one on your stomach or somewhere
11 else.

12 The problem with that is when that
13 happens, you're dead. That's your -- the bottom
14 part of your brain is your brainstem. And that's
15 where it -- all the centers that make your heart
16 beat, make you breathe.

17 So that's one way people can die in heat
18 stroke.

19 **Q.** And is that something that you believe
20 occurred in this particular case?

21 **A.** I couldn't tell you.

22 **Q.** Do you know what the -- Ms. Do asked you
23 some questions about differentiating the
24 pathophysiology at the cellular level versus the
25 macroscopic level.

1 **A.** Correct.

2 **Q.** And that was something you were -- you, I
3 believe, wanted to explain. Can you explain the
4 difference between the pathophysiology at the
5 microscopic level versus the macroscopic. And tell
6 us what "macroscopic" means.

7 **A.** Yeah. So pathophysiology versus the --
8 the pathophysiology of things. When we talked
9 about the neurotransmitters, the acetylcholine,
10 that's down at the microscopic, submicroscopic --
11 down into chemical structures. And that's
12 really -- and that's been well shown in -- on how
13 that works in organophosphates. In heat illness
14 that idea, that concept, is a theory and hasn't
15 been well shown.

16 So I am not an expert at down to the
17 microscopic level and down to the chemical
18 structure level of what's happening. To my
19 knowledge, from what my readings are, we don't have
20 an answer to that.

21 **Q.** Do you recall whether you explained that
22 to Ms. Do during your interview in this case?

23 **A.** I don't believe I did.

24 **Q.** Well, let me show you what's marked as
25 Exhibit 623, referring to page 60, 61, and then

1 into 62. Were you asked a question about whether
2 you could explain things on cellular level?

3 **A.** I'm not sure where you're at.

4 **Q.** Well, here's -- let me show you the
5 question, which is here starting at the bottom of
6 page 61.

7 **A.** It says, cell --

8 **Q.** If you want to read it to yourself.

9 **A.** Okay.

10 **Q.** And then I'm going to ask you if you
11 explained back in the time of your interview in
12 January that you were not giving an opinion as to
13 what's happening at the cellular level.

14 **A.** Okay. It says, I said, I can't say on a
15 cellular level. I'm not a molecular biologist.

16 **Q.** And what's a molecular biologist?

17 **A.** It's somebody that works with the
18 molecules in biology down to that small cellular or
19 even below level, smaller level.

20 **Q.** Ms. Do asked you some questions about
21 myoglobin. Do you recall being asked about
22 myoglobin?

23 **A.** Yes.

24 **Q.** And myoglobin specifically in urine?

25 **A.** Correct.

1 **Q.** And can you tell us what the significance
2 is of myoglobin in urine in respect to this
3 particular case.

4 **A.** It can show the breakdown of muscle.
5 When you're worried about when people are
6 dehydrated or there's been muscle breakdown, they
7 can -- the process of that can clog their kidneys.
8 We talked a little bit about that earlier, but that
9 was yesterday.

10 Their kidneys are a type of filter. And
11 if you clog up the filter, then they'll -- they'll
12 fail. And so a test we use is myoglobin in the
13 urine. And you can have this kind of
14 reddish-tinged urine without -- when you look on
15 the microscope, there's not actually red blood
16 cells there. So that's a test that we look for for
17 possibly having that problem.

18 **Q.** And do you know whether any myoglobin was
19 found in the urine from these patients who
20 presented at the hospital?

21 **A.** I believe there were. And -- and the
22 way -- the way you test for that is you have -- you
23 have positive blood when you look at their
24 urinalysis, the analysis of the urine. They'll say
25 blood? Lots or little. But red blood cells? None

1 or maybe one or two.

2 If you have a lot of blood on that test
3 but not red blood cells, that's a sign of
4 myoglobin.

5 **Q.** Now, you were asked some questions about
6 the number of 40 degrees centigrade versus 41
7 degrees.

8 Do you recall that?

9 **A.** Yes.

10 **Q.** Or 104 versus 104.5 or 105. Can you tell
11 us why it is that you used the 40 degree number in
12 your report.

13 **A.** Again, I -- what -- when I do my lecture
14 on this, I used to do -- I used to have all the
15 different numbers through there. And one of the
16 people would ask, well, what is it? 104 or 106?
17 And I just decided to pick one for consistency.

18 Because the reality of it is is that we
19 don't want to base our diagnosis only on the
20 temperature. We got to look at the big picture.
21 So I picked one and just stuck with that one since.

22 **Q.** And you've talked a number of times about
23 the big picture. Can you tell us what the big
24 picture is as -- as you use that term in this case.

25 **A.** Well, this -- well, that's a big

1 question. The big picture is you -- you presented
2 with some -- a problem here of trying to look at
3 what caused these people's death.

4 And you've got a bunch of signs and
5 symptoms that can -- if you look at them just
6 individually, it can fit into a lot of different
7 categories. But if you look at them all together
8 with the situation, then it becomes easier to make
9 that diagnosis.

10 **Q.** And in determining this big picture, what
11 information did you rely upon to make that
12 determination?

13 **A.** Everything you -- you see here. All the
14 medical records. Everything we've discussed here.

15 **Q.** And you told Ms. Do that, in your
16 opinion, the signs and symptoms, the presentation
17 of the patients, was more consistent with heat
18 stroke -- or I think you said inconsistent with
19 organophosphate poisoning?

20 **A.** Yes.

21 **Q.** Can you explain your opinion and the
22 basis for that opinion.

23 **A.** Well, we went through this whole list of
24 things that can happen on both -- both sides of the
25 coin. They can happen on both organophosphates and

1 heat illness and a lot of other things. So now
2 I've got to break it down more. We discussed this
3 already.

4 One of the key findings here is what
5 causes death in organophosphate poisoning. And
6 that's people are not being able to breathe. And
7 that's because they have so much saliva or they're
8 producing secretions in their bronchus down
9 in their -- in their lungs, and they're, basically,
10 drowning.

11 Don't see evidence of that in the medical
12 records. We can look at pupils. Pupils can go
13 both ways for heat illness. They can go both ways
14 for organophosphates. We can look at nausea,
15 vomiting, diarrhea, all these other things.

16 But this is a key factor in this that you
17 look at these patients -- we talked a little bit
18 earlier -- as these patients that they strapped to
19 a backboard and put a mask on them. They would be
20 drowning if this was organophosphate poisoning.

21 So this is why one of the big reasons it
22 pushes more towards the organophosphates -- or not
23 the organophosphates. Towards heat illness.

24 **Q.** You were asked some questions -- and I
25 don't know if I can find the flip chart. But do

1 you remember the chart where you're the outlier?

2 **A. Yeah.**

3 **Q.** Perhaps it's on this one. You were asked
4 questions about -- here we go. You were asked
5 questions about being the outlier. First of all,
6 do you know whether Drs. Cutshall, Lyon, or Mosley
7 reviewed all of the 18 patients' medical records?

8 **A. I have no idea.**

9 **Q.** And assuming that they did not review all
10 of the patients' medical records, would you believe
11 that that could affect the validity of your opinion
12 versus any opinions they expressed?

13 **A. Say that again. I'm sorry.**

14 **Q.** Well, how can reviewing all of the
15 medical records for all of the patients make a
16 difference in determining what actually happened to
17 these three people who died?

18 **A. It gives you the full picture. You need
19 to have all the information to -- to make that
20 judgment.**

21 **Q.** And if Dr. Cutshall testified that,
22 assuming there was no evidence of organophosphates
23 at the scene, he would still believe the cause of
24 death was heat stroke, would that put him in your
25 camp or the other camp as far as being an outlier?

1 MS. DO: I'm going to object. That misstates
2 the testimony.

3 THE COURT: Once again, ladies and gentlemen,
4 just use your memory recollection regarding the
5 testimony.

6 Overruled.

7 You may answer that.

8 THE WITNESS: Well, that was the whole
9 argument was. I believe these doctors -- Mosley,
10 Lyon, and Cutshall -- showed clearly in their
11 medical records that they thought heat illness was
12 involved in their deaths. So that's -- we spent a
13 lot of time on this. And I don't see the -- the
14 separation.

15 **Q.** BY MR. HUGHES: And assuming Dr. Lyon
16 had, essentially, the same opinion, that if there
17 were no organophosphates at the scene, he would
18 still believe that the cause of death was heat
19 stroke, would that -- where -- where would that put
20 him along your line there?

21 **A. It puts them all in the same stack.**

22 MS. DO: Objection.

23 I'm sorry, Doctor.

24 THE WITNESS: That's okay.

25 MS. DO: Objection, Your Honor. Misstates the

1 testimony.

2 THE COURT: It was a hypothetical.

3 You may answer that.

4 THE WITNESS: Puts us in the same -- puts us
5 all in the same pile.

6 **Q.** BY MR. HUGHES: Now, Dr. Mosley, slightly
7 different boat than Dr. Cutshall and Dr. Lyon.
8 Assuming Dr. Mosley believed that organophosphates
9 did not play a role but the cause of death was heat
10 stroke and possibly hypercapnia, too much carbon
11 dioxide, is hypercapnia, or too much carbon
12 dioxide, something that's inconsistent with your
13 findings in this case?

14 **A. No. It's not inconsistent.**

15 **Q.** And can you explain the role that
16 hypercapnia can have in the deaths of, for example,
17 Ms. Neuman, who was Dr. Mosley's patient.

18 **A. Well, when all of us ultimately do die,
19 you ultimately stop breathing. And when you stop
20 breathing, your oxygen level goes down and your
21 carbon dioxide level goes up. And hypercapnia is
22 too much carbon dioxide. So it's kind of -- that's
23 part of all of our demises one way or another.**

24 **Q.** You were asked some questions about
25 Ms. Neuman's medical records and specifically

1 whether certain records might be generated for
2 insurance purposes.

3 Do you remember being asked that?

4 **A. Yes.**

5 **Q.** And referring to Exhibit 365, Bates
6 No. 2657, have you ever had a patient who, despite
7 your best efforts, has died on you in the hospital?

8 **A. Yes.**

9 **Q.** And when you've had that patient, have
10 you noted the chart with the death note?

11 **A. Yes.**

12 **Q.** When you make that notation, are you
13 making up something so you can just give the
14 insurance company some technical term?

15 **A. No.**

16 **Q.** What's your purpose for you when you make
17 a death note in a patient's chart?

18 **A. To give your impression of what happened.**

19 **Q.** And this is -- unfortunately you've heard
20 the jokes, I'm sure, about doctors' handwriting?

21 **A. Right.**

22 **Q.** This is -- can you read the handwriting
23 on Bates page 2657?

24 **A. Well, part of it says, patient critically
25 ill with heat stroke. And then there's an arrow.**

1 **It says, DIC, anoxic brain injury. I can't make**
2 **out the next one.**

3 **Q.** Do you know what the term "ARF" stands
4 for?

5 **A. Yes. It's acute renal failure.**

6 **Prolonged family discussion with mother,**
7 **ex-husband, children, who all agree patient -- I**
8 **can't quite say. Extubated. That means take the**
9 **tube out of their mouth. Take them off the**
10 **ventilator with family present at 3:45.**

11 **Q.** Now, this section in here about the --
12 the heat stroke and then the arrow leading to the
13 words "DIC and anoxic brain injury" -- is some of
14 that medical notation?

15 **A. Correct.**

16 **Q.** Can you tell us what that arrow stands
17 for.

18 **A. Well, heat stroke causes the DIC, the**
19 **acute renal failure, the anoxic brain injury.**

20 **Q.** And then turning your attention to
21 Exhibit 366, Bates No. 3018, as a doctor have you,
22 then, prepared a formal death summary for a
23 patient?

24 **A. Yes.**

25 **Q.** And what is the purpose for you as a --

1 as a doctor in preparing that formal death summary?

2 **A. Document what happened.**

3 **Q.** Is it -- is the reason for preparing that
4 for insurance purposes?

5 **A. No. Well, I'm sure it's used in. But**
6 **that's not the reason you do it.**

7 **Q.** What's the reason you do it?

8 **A. For the medical record to show what**
9 **happened with this patient.**

10 **Q.** And is this something that you reviewed
11 in the course of making your determination?

12 **A. Yes.**

13 **Q.** Ms. Do asked you some questions about
14 Dr. Lyon and whether or not he was 51 percent
15 certain or not.

16 **A. Yes.**

17 **Q.** Assuming hypothetically that Dr. Lyon was
18 part of a profession or group of doctors where they
19 have a medical association where they have a
20 standard for reaching causes of death. Well, first
21 of all, are you a member of any professional
22 medical association?

23 **A. The American Academy of Emergency**
24 **Medicine.**

25 **Q.** Does your medical profession or this

1 association have certain standards that doctors
2 that are members need to comply with?

3 **A. Yes.**

4 **Q.** And assuming Dr. Lyon was a member of a
5 similar association for medical forensic
6 pathologists, and their standard was a doctor had
7 to have at least a 51 percent certainty as to the
8 cause of death when they -- when they ruled the
9 manner under legal terms as an accident, do you
10 know whether that equates to the same thing as the
11 doctor only having a 51 percent certainty?

12 **A. Sounds like it's falling back on the**
13 **standard. I think they would be different. I**
14 **can't speak to --**

15 **Q.** Do you know whether or not Dr. Lyon
16 actually had a higher confidence than the minimum
17 that he hypothetically told the jury was 51
18 percent?

19 MS. DO: Calls for speculation.

20 THE COURT: It was whether or not Dr. Dickson
21 knows.

22 THE WITNESS: No idea.

23 **Q.** MR. HUGHES: You were asked questions
24 about Mr. Mehravar's medical records. Let's see if
25 I can find that. Bear with me a moment, Doctor. I

1 have to dig through a pile here.

2 Do you have any medical records that have
3 been admitted as exhibits?

4 **A. These ones have all been admitted as**
5 **exhibits. I think they all have --**

6 **Q.** Are those your personal copies?

7 **A. These are my personal copies.**

8 **Q.** Okay.

9 **A. I've got a stack. No. This is a**
10 **transcript. No. I don't think so.**

11 **Q.** You were asked some questions with
12 respect to whether Dr. Furrey, who was the doctor
13 for Mr. Mehravar, had reached certain opinions
14 about Mr. Mehravar. Do you remember being asked
15 about Mr. Mehravar's record?

16 **A. I do.**

17 **Q.** Do you know whether Dr. Furrey had access
18 to the same information that you did? In other
19 words, access to not only all the patients' records
20 for the 18 patients but witness statements from the
21 scene.

22 **A. I would say no. I don't think he would**
23 **have them.**

24 **Q.** And in this particular case, do you know
25 whether Mr. Mehravar, on October 8th at least, was

1 able to recall even what had happened to him or
2 provide information to the doctor?

3 **A. The diagnosis was confusion. So I would**
4 **say no. It says here, he does not recall what**
5 **happened due to loss of consciousness.**

6 **Q.** And Ms. Do asked you about, then, this
7 opinion by the doctor that I explained we did not
8 have a cause for his symptoms or the other people's
9 symptoms, including the two people that died.

10 The two that died would be Ms. Brown and
11 Mr. Shore; correct?

12 **A. Correct.**

13 **Q.** Because on this date -- on this date of
14 October 8th, Ms. Neuman was still alive in a
15 different hospital; correct?

16 **A. Correct.**

17 **Q.** Do you know whether, as an emergency room
18 doctor, knowing the conditions inside the sweat
19 lodge, very, very, very hot and humid environment
20 with a prolonged exposure for maybe two hours --
21 would that be significant in trying to reach a
22 determination as to what had happened?

23 **A. Yes.**

24 **Q.** If you didn't have that information,
25 could that hamstring you as a doctor in trying to

1 determine what had happened?

2 **A. Yes.**

3 **MS. DO:** Your Honor, for Rule 106 I'd ask
4 counsel to show the jury Exhibit 192, Bates stamp
5 1808.

6 **MR. HUGHES:** Okay. And I think I just had it
7 up, but I'll put it up again.

8 **Q.** And Doctor, on Bates No. 1808, do you
9 know whether this document -- whether the patient
10 could recall what happened?

11 **A. That's what it says. It says, the**
12 **history of the present illness. It says, the**
13 **patient does not recall what happened due to loss**
14 **of consciousness.**

15 **MS. DO:** Your Honor, again, for Rule 106, I
16 would ask that the entire sentence be read.

17 **THE WITNESS:** The patient presents with
18 altered mental status, and patient was at a sweat
19 lodge approximately 1500 and does not recall what
20 happened due to loss of consciousness. Patient
21 having headache, nausea. The onset was unknown.
22 The course, duration, of symptoms is constant. The
23 degree of onset was unknown, et cetera, et cetera,
24 et cetera. Associated symptoms: Nausea, abdominal
25 pain, headache. No evidence of trauma.

1 **Q. BY MR. HUGHES:** Is there any evidence in
2 that record of this drooling that you say you've
3 actually seen in -- in live patients who have
4 presented with organophosphate poisoning?

5 **A. Look on the physical exam. Under ears,**
6 **nose, mouth, and throat, oral mucosa is moist. No**
7 **pharyngeal erythema or exudate. So that was --**
8 **that means no.**

9 **Q.** Is that something you would expect to see
10 documented?

11 **A. Yes.**

12 **Q.** And with respect to this section, history
13 of present illness, do you have a similar section
14 in the forms that you fill out for patients who
15 present to the emergency department?

16 **A. Yes.**

17 **Q.** And if you had a patient that presented
18 and you knew that they were in a very hot
19 environment, a very humid environment, for several
20 hours, is that -- if you had that information, is
21 that something significant enough to note in the
22 history of present illness?

23 **A. Yes.**

24 **Q.** And was that noted for Mr. Mehravar, the
25 patient who couldn't recall what happened?

1 **A. Just says, the patient was at a sweat**
2 **lodge.**

3 **Q.** Turning your attention to Exhibit 193,
4 which is Mr. Mehravar's EMS records, do you know
5 whether those records document this sort of heavy
6 drooling that you would expect to see, heavy
7 salivation you would expect to see, and that you've
8 seen in the organophosphate patients you've
9 treated?

10 **A. I don't see any evidence of that here.**

11 **Q.** In fact, have you reviewed the records of
12 all 18 patients?

13 **A. Yes.**

14 **Q.** And in those records did you see signs of
15 this heavy drooling that you would expect to see?

16 **A. Well, that -- that was where we went to**
17 **earlier. There was the one patient that initially**
18 **they thought, well, is this drooling? And I think**
19 **it's Stephen Ray. And then when they looked**
20 **further, when they looked in the mouth, it wasn't**
21 **drooling. It was vomiting.**

22 **And then when they looked forward, the**
23 **oral mucosa, put the patient on his back, that goes**
24 **back to the whole thing. If someone who's drooling**
25 **that profusely, put them on their back and stick**

1 **them -- put them on their back and stick a mask on**
 2 **them is not going to be a good thing.**

3 **Q.** You were asked some questions about
 4 Dr. Mosley's opinions. I think Ms. Do said
 5 something along the lines that she believed
 6 Dr. Mosley testified that the foaming and the
 7 pinpoint pupils were inconsistent with heat stroke.

8 Do you remember being asked that?

9 **A. Yes.**

10 **Q.** Now, assuming Dr. Mosley actually said
 11 that the foaming is caused by pulmonary edema and
 12 pulmonary edema is a late-stage finding for heat
 13 stroke, do you know whether or not Dr. Mosley was
 14 correct or incorrect about pinpoint pupils not
 15 being a sign for heat stroke?

16 **A. Well, as we read to you, the eMedicine**
 17 **article says that it can be. The eMedicine article**
 18 **on heat stroke is you can have pinpoint pupils.**

19 **Q.** Do you know whether Dr. Mosley has ever
 20 actually treated a live patient who suffered from
 21 heat stroke?

22 **A. I don't know.**

23 **Q.** Have you treated live patients who've
 24 suffered from heat stroke?

25 **A. Yes.**

1 **Q.** How many would you reckon you've had to
 2 treat over your career?

3 **A. I'd say probably 20 to 30 a summer in the**
 4 **last seven years. We have -- Bakersfield gets warm**
 5 **in the summer too. That's where I did my**
 6 **residency. And we saw them there as well. Not to**
 7 **the degree we get them in Yuma. But --**

8 **Q.** Have you seen patients present with
 9 pinpoint pupils for heat stroke?

10 **A. Yes.**

11 **Q.** Ms. Do asked you some questions about the
 12 Goldfrank's Toxicological Emergency article. Do
 13 you remember being asked about that?

14 **A. Yes.**

15 **Q.** Let me see if I can find that exhibit.
 16 That's Exhibit 1008. And you asked when the
 17 document or when the article had been published.

18 Do you remember that?

19 **A. Yes.**

20 MR. HUGHES: Your Honor, may I approach the
 21 witness?

22 THE COURT: Yes.

23 **Q.** BY MR. HUGHES: Showing you Exhibit 1008,
 24 is there a -- I used to know what this page was
 25 called. But is there a page in this document that

1 talks about when it was published?

2 **A. Yes. Says copyrighted 2006.**

3 **Q.** And had it been published prior to that
 4 date?

5 **A. 2002, '98, '94, '90, '86, '82, '78.**

6 **Q.** The article that you referred to on heat
 7 stroke, or at least one of those articles -- what
 8 was its publication date?

9 **A. 2010.**

10 **Q.** And Ms. Do asked you some questions -- do
 11 you have the exhibit about page 1497?

12 **A. Okay.**

13 **Q.** Do you remember being asked some
 14 questions about that page?

15 **A. Yes.**

16 **Q.** And does page 1497 devote itself to
 17 talking about a case study of someone who had been
 18 exposed to organophosphates?

19 **A. Starts out with, a 40-year-old, suicidal**
 20 **man who was brought by ambulance to emergency**
 21 **department after drinking two sips of 50 percent**
 22 **malathion about three hours earlier.**

23 **Sounds like a case study.**

24 **Q.** And for this patient who actually drank
 25 50 percent malathion three hours before, what was

1 his condition as far as unconscious or being awake,
 2 alert or not alert?

3 **A. It says, the patient was awake but**
 4 **confused and extremely diaphoretic. Means sweaty.**

5 **Q.** And did the article document what that
 6 patient's -- whether he was drooling or not?

7 **A. The patient was drooling between episodes**
 8 **of vomiting.**

9 **Q.** And then below that paragraph, two
 10 paragraphs down, Ms. Do asked you whether or not
 11 this Goldfrank article confirmed that you could see
 12 pink-tinged, frothy sputum in a patient who was
 13 suffering from organophosphates.

14 Can you tell us whether or not that
 15 pink-tinged, frothy sputum was actually caused by
 16 pulmonary edema in the patient?

17 **A. Generally, pink, frothy -- pink, frothy,**
 18 **foaming exudate from your mouth is -- is from**
 19 **pulmonary edema.**

20 **Q.** And in this particular case, does that --
 21 prior to that statement about the pink-tinged,
 22 frothy sputum, does that article document that the
 23 patient had some sort of a radiograph showing
 24 bilateral pulmonary edema?

25 **A. And it says he had a portable chest**

1 radiograph, which was a chest X ray. Showed
2 bilateral pulmonary edema with a normal sized
3 heart.

4 Q. Do you know what actually ultimately
5 happened to this fellow who had drunk the
6 50 percent malathion?

7 A. I don't.

8 Q. Is that documented towards the end of
9 that first page?

10 A. It says, on hospital day three the
11 patient reported feeling much better. His
12 pralidoxime, which is 2-PAM infusion, was stopped.
13 He was evaluated by the psychiatric service.

14 He had some -- he says that afternoon he
15 reported two episode of diarrhea, some nausea. As
16 a result, he was given some more atropine.
17 Atropine was administered.

18 And then at the end it says, the patient
19 required no further atropine during his
20 hospitalization. The pralidoxime infusion was
21 stopped on hospital date five, and he was
22 discharged to a psychiatric facility on hospital
23 day seven.

24 MS. DO: Your Honor, if counsel wishes, we can
25 move this into evidence since we're reading large

1 portions of it.

2 Q. BY MR. HUGHES: Well, let me ask you
3 another question, Doctor, regarding this article.
4 Ms. Do asked you about the documentation, at least
5 at the time the article was prepared, that eight
6 people had died in a particular year from exposure
7 to organophosphates.

8 A. Yes.

9 Q. And does that article indicate whether or
10 not those people, those eight, have been exposed to
11 common household organophosphates or to industrial
12 organophosphates?

13 A. I don't know.

14 MS. DO: Your Honor --

15 THE COURT: Mr. Hughes, if you would address
16 that. There was an offer to stipulate to
17 admission.

18 MR. HUGHES: Your Honor, I have no objection.
19 It's Exhibit 1008.

20 THE COURT: By stipulation, 1008 is admitted.
21 (Exhibit 1008 admitted.)

22 THE COURT: Thank you.

23 Q. BY MR. HUGHES: Doctor, do you know
24 whether, given the population of the United States,
25 eight deaths in that population in a year indicates

1 how dangerous or not organophosphates are?

2 A. Not very dangerous. A lot more people
3 die from this stuff every year.

4 Q. And for purposes of the record, what are
5 you holding up?

6 A. Water.

7 Q. And how -- how would somebody die from
8 water?

9 A. Drowning.

10 Q. You were asked some questions about
11 Mr. Stephen Ray's medical records. Do you recall
12 that?

13 A. Yes.

14 Q. Let me see if I can find that.

15 Can you explain to us what records you
16 had available to you prior to testifying today.

17 A. All these.

18 Q. And did you have available to you prior
19 to testifying today all of Mr. Ray's medical
20 records?

21 A. I assume so. Yes.

22 Q. Did you have -- Ms. Do asked you if you
23 had the EMS report.

24 A. I -- I do have that available. And I
25 did.

1 Q. And she asked you about Dr. Kennedy and
2 Dr. Neff's report.

3 A. Yes.

4 Q. Let me see if I can find those.

5 Doctor, I think I asked you already. Do
6 you have any of the marked exhibits in front of
7 you?

8 A. Part of them I do.

9 Q. With the sticker on the back?

10 A. Oh. I'm sorry. No. I do not.

11 THE COURT: Do you think this might be a good
12 time?

13 MR. HUGHES: It would be a very good time,
14 Your Honor. Thank you.

15 THE COURT: Ladies and gentlemen, we'll take
16 the afternoon recess at this time. Please be
17 reassembled in about 15 minutes to get started
18 again at 3:00.

19 Remember the admonition.

20 And Doctor, you're excused at this time,
21 as well.

22 I'm going to ask the parties to remain a
23 moment, please.

24 (Proceedings continued outside presence
25 of jury.)

1 THE COURT: I wanted to address some of the
2 things that were brought up right before the
3 recess.

4 First, with regard to the exhibits -- I'm
5 sorry. Excuse me. The exhibit containing the
6 medical records that were given to Dr. Dickson. I
7 asked did the parties want to talk about that. If
8 you still -- do you still have the same positions?

9 MR. HUGHES: Your Honor, I did tell Ms. Do I
10 would agree to redact out Mr. Pfankuch's medical
11 records from the CD. My concern is Ms. Do asked
12 the doctor about the transmittal letter for that
13 CD. And the jury heard that the doctor was
14 provided with -- at least according to the
15 transmittal letter, with a number of things.

16 And then Ms. Do began to call into
17 question, did the doctor get all of Mr. Ray's
18 records or not and called into question my
19 opinion -- his opinion as to the causes of death.

20 And then the jury heard that this CD that
21 was transmitted to him with all these things on it
22 that they heard about was now in evidence.

23 If we remove from it, for example, the
24 witness statements and the medical records, the
25 other -- which are the things the jury heard about,

1 the jury is going to have the opinion that along
2 with perhaps Mr. Ray's records, Mr. Stephen Ray's
3 records, other things were intentionally kept out
4 or not given to the doctor, which I think would be
5 intentionally misleading since the jury heard this
6 is the CD. This is what they can expect to find on
7 it.

8 And, Your Honor, the other reason those
9 witness statements, which are on the exhibit, which
10 Ms. Do moved into evidence -- the reason they're
11 relevant is Ms. Do asked quite a bit of time
12 particularly with that chart down there on the
13 bottom trying to explain, well, what did
14 Dr. Dickson know? What did he have available that
15 made him the outlier? What information did he
16 have? What information did the other doctors have?

17 The witness statements, which the doctor
18 has already testified he's relied upon, are
19 relevant to his opinion that he's given in court
20 and, therefore, would not be hearsay because
21 they're -- again, they're relevant to why he
22 reached that opinion. It explains, again, the
23 quality of his opinion, which Ms. Do has called
24 into question.

25 THE COURT: Mr. Hughes, why don't we get at it

1 this way: What did you think Ms. Do was offering
2 at the time she asked that the records be admitted?

3 MR. HUGHES: Your Honor, it was the CD that
4 the state had sent the doctor. We provided a copy
5 contemporaneously to Ms. Do. And what I thought
6 was exactly what was on that letter that Ms. Do
7 read to the jury that included the witness
8 statements. It included the medical records. And
9 I think there's something else that she -- that she
10 read from the letter.

11 But it was, basically, the transmittal in
12 December of all the information that we,
13 essentially, provided to the doctor prior to him
14 reaching his opinion.

15 So, again, it was my understanding that
16 given the line of Ms. Do's questions, which was
17 attacking what did the doctor know, that's why I
18 had no objection to that exhibit coming in.

19 THE COURT: Ms. Do, what did you think you
20 were asking to be admitted?

21 MS. DO: Your Honor, I think clearly from my
22 questions I was directing my attention and the
23 witness's attention to whether or not he had all of
24 Stephen Ray's medical records, because there was a
25 lot of testimony that he relied on the complete

1 set.

2 It's clear from the transmittal sheet
3 that he'd only gotten partial regards, specifically
4 38 pages on December 16, 2010. He handed that CD
5 to me right at the lunch break.

6 Based upon that line of questioning, when
7 Mr. Hughes began his redirect and started
8 questioning him about Stephen Ray, I just wanted to
9 make sure, since we had discussions earlier, that
10 the jury has evidence of what this witness had of
11 Stephen Ray's records on December 16.

12 At the time that I moved it in, that was
13 all that I was concerned with. And then I realized
14 that there were additional things on that CD that
15 have been ruled inadmissible under a number of
16 court rulings -- the Daniel P.'s records on there,
17 which I believe Mr. Hughes has agreed to redact.
18 There are a number of supplements.

19 And if I could approach the Court? I had
20 identified the various supplements that was
21 transmitted to Dr. Dickson. A lot of these are --
22 they're all witness statements. A lot of them are
23 from 2005, the Daniel P. incident, 2007 and 2008,
24 from witnesses who have not even testified.

25 So I apologize that I caused this issue

1 not realizing that the various items that are not
2 admissible would be in that CD. I understand from
3 the witness' testimony that he's already said that
4 he did receive witness statements. The jury has
5 that.

6 When I asked him about what was in the
7 December 16 transmittal letter, I specifically
8 directed his attention to paragraphs 1 and 2 and 3,
9 which had to do with the medical records and the
10 autopsy.

11 The witness began to go into paragraph 4,
12 which had to do with the witness supplements, and I
13 stopped him because that wouldn't -- that, first of
14 all, wasn't relevant to my line of questioning.
15 That would have been gone into hearsay.

16 Rule 703 is specific, Your Honor. This
17 expert can testify to the basis of his opinion.
18 But it doesn't allow us to backdoor in inadmissible
19 evidence by revealing to the jury what -- what the
20 actual data is.

21 THE COURT: I -- I know the technical matter,
22 Ms. Do. The question is with a stipulation as to
23 evidence. And that's kind of what we're dealing
24 with now -- that is what we're dealing with now.

25 And I thought it related solely to

1 medical records. That was my impression at the
2 time that was the context of the questioning. And
3 what needs to be done is it needs to be made clear
4 that that's -- that other information was provided.
5 All this exhibit contains are medical records so
6 that there's not any misleading.

7 But to just -- to bring in evidence where
8 there's been so much litigation over inadmissible
9 evidence and then just to have it come in by
10 inadvertence, that just would not be an appropriate
11 trial process.

12 But they have to know -- this can't
13 mislead them into thinking this is everything.
14 They have heard the testimony, and they know that
15 Dr. Dickson was given other information. So there
16 has to be some kind of labelling, some kind of
17 stipulation -- there should be -- as to what limits
18 there are to the information provided.

19 MS. DO: And I appreciate that. And perhaps
20 the way that we could cure this is to -- either the
21 state could do it or I could do it -- redact the
22 inadmissible information and leave solely the
23 medical records on there.

24 And then the Court can tell the jury
25 that -- that something's been done to this exhibit

1 and all that is being provided are the medical
2 records, not all the other information.

3 THE COURT: Something of that nature. But
4 both sides -- you know -- give me what you think
5 needs to be done to clarify that.

6 MS. DO: Thank you.

7 THE COURT: The -- the other thing I -- I need
8 to get these exhibits because they've been in --
9 there's a dispute that's been going on. And I
10 think they're numbered 401, 406, and 410. That --
11 that's -- I just haven't seen them since -- since
12 it was left open.

13 If I've got the numbers right, those are
14 the records that relate to paying for seminars and
15 other seminars attended. If those are the correct
16 numbers. I just want you to know I do need to go
17 look through those in -- in some more detail. And
18 I didn't want that to come up with Sergeant Barbaro
19 or something without me having done that.

20 With regard to juror -- juror No. 10.

21 Mr. Li, you asked that --

22 MR. LI: We would like very much to finish
23 this trial on time and as quickly as possible and
24 are troubled about the idea of losing two days for
25 a juror vacation. And we all have our calendars

1 that we have to deal with, and I understand the
2 Court's decision to add days to the 21st, 23rd.

3 THE COURT: Well, it was the 21st. But I
4 indicated that there are other days lost as well
5 for various reasons.

6 But go ahead, Mr. Li.

7 MR. LI: But that's -- you know -- Your Honor,
8 to be fair, that's to be expected in many trials.

9 THE COURT: True. That's true, but --

10 MR. LI: Some of -- some of these have been
11 the result of things that we've been litigating
12 and -- you know. So as a consequence, we would
13 like very much to finish this trial on time. And
14 we worry that losing two days out of the remaining
15 14 trial days would be -- you know -- it would make
16 it very difficult to finish on time. And we would
17 like to finish on time.

18 So, I mean, the bottom line is we would
19 be -- we would consent to letting that particular
20 juror go.

21 THE COURT: Ms. Polk.

22 MS. POLK: Your Honor, the state would object
23 to that. That Juror No. 10 made that information
24 available to us, I believe, during the jury
25 selection, and he was allowed to be empaneled. And

1 so to let him go at this point based on something
2 that was known to everybody at the time would not
3 be appropriate.

4 The state's suggestion is -- I believe
5 the days that Juror No. 10 has that conflict -- I
6 think it's a Thursday, Friday, the 16th and 17th,
7 of June, as I recall. We will have matters to
8 resolve without the jury being present, such as
9 jury instructions and some other matters.

10 I would think that if we're at that point
11 that those would be good days for the parties to do
12 the work that doesn't require the jury present
13 anyway.

14 But the state would object to excusing
15 him for a reason that was known at the time that he
16 was empaneled.

17 MR. LI: Judge, for whatever it's worth, Your
18 Honor, and for the record, at least at the time he
19 made that known, the understanding among all the
20 parties was -- according to the court order was
21 that the trial would terminate on June 10.

22 I understand the Court indulged my
23 request early on. And I -- I want to make this
24 clear. I think I said to this Court, you tell me
25 what to do, Your Honor. I need to decide, and I

1 have to pay or not pay for this particular thing
2 that I have to do associated with this board that
3 I'm on. And that was the posture that I put it in.

4 But at the time we were doing jury
5 selection, it was all of our understanding that the
6 trial would terminate on June 10th. And it was
7 also all of these respective juror's understanding
8 because I think that's what the Court advised them.

9 So -- you know -- we'll leave it to the
10 Court's discretion as to -- you know -- how to best
11 resolve this. But our -- our view is that we
12 should finish this case. We have two more
13 alternates, and -- you know -- number -- the juror
14 may be excused.

15 THE COURT: Mr. Li, you advocated quite
16 strongly for that time for yourself. I'm not --
17 I'm not blaming you. But it was not just presented
18 as -- you know -- make the call, Judge. It was --

19 MR. LI: Your Honor, I mean --

20 THE COURT: You stressed the importance to you
21 and --

22 MR. LI: It is -- it is --

23 THE COURT: -- and the state respected that.
24 I respected that. So --

25 MR. LI: And I appreciate that, Your Honor.

1 But for -- I sincerely do appreciate that. But the
2 posture that it came up in is that I was at a
3 decision point where I had to tell the board
4 whether I was going or not. And there was a
5 decision about paying or not paying.

6 And I -- I made the record that, Your
7 Honor, it's clearly the Court's -- listen. I
8 respect and appreciate --

9 THE COURT: I know it -- I know it is. But
10 you don't need to say anymore on that. Absolutely.
11 The Judge makes the -- the call on that.

12 MR. LI: I think we all -- just for whatever
13 it's worth, I think we all thought this case would
14 end sooner. I mean, I think we --

15 THE COURT: I think so. That's true.

16 MR. LI: And so I think we all truly believed
17 that we would be done already.

18 THE COURT: All right. I think it's important
19 to talk to Juror No. 10. I'm going to ask him to
20 stay over. I think the only thing I can tell him
21 is at this point that the trial may be over and
22 it -- and may not. And that's what I can tell him.

23 I don't know whether planning he might be
24 able to do otherwise, but I just don't really want
25 to release him at this time or even look -- or make

1 that plan right now, put that in as a plan right
2 now. Of course, he wouldn't be released now
3 because the trial may well be over by then. At the
4 same time, I don't want him to believe he's being
5 ignored either with his concern.

6 MS. POLK: And, Your Honor, does the Court
7 object to telling him that he can take the two
8 days, understanding the state's suggestion that we
9 do have work to do that probably is going to be
10 time consuming? We have work to do anyway that
11 doesn't require the presence of the jury.

12 THE COURT: Ms. Polk, I'm really hesitant to
13 do that. It just depends on where the trial is at
14 that point.

15 MR. KELLY: Your Honor, my suggestion would be
16 not to discuss this matter with him today.

17 THE COURT: He's had that note out there for
18 some time. And the -- the problem when you have
19 this come up is you don't want somebody thinking
20 about something other than the evidence that's
21 being presented. That's the problem. And you've
22 got to address this in some fashion.

23 I need to look at the note again. At the
24 very least, today I'm going to let him know that
25 it's being considered. But I need to pull that

1 note out and look.

2 Heidi, one thing I want you to do is let
3 the jury know we're obviously running through the
4 whole break, so they need to know that we're going
5 to run longer and ask them to reassemble by now.

6 So I'm going to tell him that, that just
7 that his concerns are known and they -- I think
8 that's all I can tell him right now.

9 The other thing is is that last issue
10 that was right before the -- the recess that came
11 up with Sergeant Barbaro.

12 And that question, Ms. Polk -- it's been
13 presented before.

14 The whole issue of what I call "postevent
15 evidence or testimony" is not -- is not a simple
16 issue. And I remember when the original motion was
17 made. And it had to do directly with evidence that
18 could possibly relate directly to Mr. Ray.

19 Looking into the case -- looking into the
20 cases -- and there's a case out in New Jersey
21 involved an athlete. And what happened -- it was a
22 shooting -- and what happened afterwards and what
23 was done with the weapon.

24 And the first appellate level in New
25 Jersey had reversed and said that it was just all

1 prejudicial because of this postevent conduct, the
2 evidence that came in and then a split decision of
3 the supreme court, as I recall, whatever they call
4 the supreme court in New Jersey, went the other
5 way.

6 It's a very -- it's a -- it is a
7 difficult issue when you're talking about events
8 that happened after the conduct or omission that
9 might have caused the actual -- or constitute the
10 offense.

11 So in that regard I can see that if there
12 is some direct tie to what somebody did with an
13 officer, if it's made clear who was responsible for
14 it in that event, it could well relate to the
15 investigation but just on its own.

16 Just to put it out there, Ms. Polk, it
17 would seem to me that what it invites mostly is
18 just a negative inference. When, as the defense
19 points out, it doesn't necessarily have to be a
20 negative inference at all. And you get into that
21 whole -- that whole problem of just putting the
22 evidence out there to draw some kind of inference.

23 And I bring up the distinction between
24 what would be -- you know -- preevent or postevent,
25 because it's a whole different situation when

1 you're talking about what goes into causing or --
2 you know -- what's the real conduct involved.

3 Then you do have pretty large leeway for
4 the jury to consider those things and whether or
5 not it's -- it's actually part of what constitutes
6 the offense. But when it's afterwards, you don't.
7 It's a -- it's different situation. The case is
8 treated that way.

9 So I'm saying it may well be that there
10 is some relevance to this. If there really was
11 something that happened as a -- to the
12 investigation because of that, and it has to do
13 with direct observation, and it's made clear it
14 doesn't go -- it's not attributed to anybody other
15 than who actually -- you know -- made the statement
16 or whatever, then I could see relevance. But
17 unless it gets to that point, I don't think it can
18 come in just as a general proposition.

19 And that's to say, once again, when you
20 get these kind of issues, apparently there's a lot
21 more about this -- and people know a lot more about
22 this than I do -- either in the report form that's
23 been mentioned or in the subsequent interview form.
24 And I don't know without hearing trial testimony
25 what the correct ruling would be.

1 So that's where that stand.

2 MR. LI: Judge, I would ask, then, that the
3 state's proffer what the -- what the relevance is
4 and what the actual effect on the investigation.
5 This guy isn't even the case agent. He just
6 secures the scene.

7 THE COURT: And that -- you have an interview,
8 though, and you have the report. And I assume
9 that --

10 Well, Ms. Polk, is that in the report,
11 evidence from that?

12 MS. POLK: It is. And Mr. Li did interview
13 Sergeant Barbaro.

14 MR. LI: I'll proffer to the Court that that's
15 what -- that's -- I'll proffer that's what --
16 that's what the -- he's a sergeant. He's not a
17 detective. He's not even in charge of
18 investigating this scene. All he does is secure
19 the scene.

20 THE COURT: And I know that we had
21 argument before the noon recess. It was presented
22 as really kind of here's what's happening out
23 there -- you know -- even though it's after
24 whatever was caused -- what was caused is done. It
25 still explains what -- what was occurring close to

1 the time or during what this extended incident was.

2 Ms. Polk.

3 MR. LI: I'm sorry. Just for the record, it's
4 an hour after.

5 THE COURT: You said 55 minutes or something
6 like that?

7 MR. LI: Yeah. I mean, just an hour -- almost
8 an hour.

9 THE COURT: Okay.

10 MS. POLK: Your Honor, a couple things were
11 going on. One was that when the detective was
12 trying to talk to participants to find out what had
13 happened, Dream Team members came up and were
14 trying to get the participants to leave, to go up
15 to their room, in spite of the fact that a
16 uniformed officer was talking to the participants.
17 The --

18 MR. LI: He's a sergeant.

19 MS. POLK: Sergeant.

20 The sergeant actually threatened to
21 arrest one of them because of their interference.

22 The second thing that was going on was
23 that somebody that we believe to be Josh
24 Fredrickson, but the detective remembers as someone
25 named Jason, came up, identified himself as

1 Mr. Ray's personal assistant, and then shadowed
2 this sergeant as he was trying to talk to different
3 people. The sergeant -- every time he turned
4 around, this man named Jason was there.

5 Those two things were going on.

6 THE COURT: And then the -- your direct --
7 your argument as to the direct relevance?

8 MS. POLK: Just that this detective was trying
9 to triage the scene as one of the early responders,
10 trying to figure out who needs help, what happened,
11 what does he need to do in -- you know -- is there
12 a crime scene here that I need to preserve.

13 And that as he's trying to talk to
14 participants, a Dream Team member in one instance
15 is leading -- is trying to get the participants to
16 leave to the point that he threatens to arrest this
17 Dream Team member.

18 And then the second thing is that
19 Mr. Ray's personal assistant is right there
20 shadowing him everywhere he's going as he's trying
21 do his job, essentially, get to a scene, triage it
22 as quickly as he can, and decide what needs to be
23 done.

24 THE COURT: And Ms. Polk, you expressed your
25 view before about 403 and -- when it's been

1 mentioned. The -- the implication, this -- you --

2 I haven't heard anything indicating that this was

3 Mr. Ray. And this case has to do with Mr. Ray.

4 And the -- while it does certainly

5 explain, here's the very initial investigation,
6 where people are and what they're doing, how does
7 it really -- how is it really relevant to -- to the
8 state's case on what -- what you believe
9 constituted an offense?

10 MS. POLK: Your Honor, it's the general scene
11 investigation. It's the facts. It's what
12 happened. It's this officer's factual recitation
13 of what happened when he got to the scene.

14 I think it goes to cross-examination to
15 the weight of the information that it's not Mr. Ray
16 who is doing it because Mr. Ray had already left
17 the scene. And certainly, Mr. Li can establish
18 that Mr. Ray is not present and he's not the one
19 telling them -- telling a participant to leave
20 while the sergeant is trying to talk to them. And
21 he's not his personal assistant who is shadowing
22 the sergeant. That would be -- he can establish
23 that.

24 But what the jury has heard is that
25 Mr. Ray did stand up and announce to everybody, if

1 you can, go back to your room, and that this is
2 consistent with that information.

3 THE COURT: Mr. Li.

4 MR. LI: I think the Court is aware of my
5 argument. I mean, it's not consistent. The
6 implication that's being made here is some
7 obstructive conduct to the point where Ms. Polk
8 says that the officer even threatened to arrest one
9 of the Dream Team members.

10 It's one thing to say, listen, if you can
11 walk, go and clear the scene so the EMT folk can do
12 their work. It's another thing, as Ms. Polk is
13 suggesting, that if these folks are actually
14 engaging in, quote, unquote -- you know -- alleged
15 obstructive conduct to which you can't even begin
16 to attribute to Mr. Ray. And that's the problem.

17 This is actually about -- maybe 55
18 minutes, almost an hour, after 9-1-1 is called. So
19 we're not talking about the immediate scene. There
20 had been EMTs on scene for almost 40 minutes by the
21 time this particular officer arrives -- sergeant.
22 He's not even an investigator. He is simply just
23 securing the scene.

24 THE COURT: I haven't heard how that might
25 have really affected the -- the quality of the

1 investigation, whether information could not be
2 obtained. It seems the primary thrust of this
3 would be to just imply that for the wrong reason,
4 Mr. Ray made some command.

5 And that's putting that kind of
6 evidence -- putting that kind of evidence out when
7 it's really after whatever causal omission or
8 conduct occurred alleged is a problem.

9 I haven't heard how -- well, I'm going to
10 have to -- if there was something where it really
11 inhibited some information or something and there's
12 a proper instruction, that might come in in that
13 fashion. But I -- it doesn't -- it sounds -- it's
14 very tenuous it appears.

15 MR. LI: I would ask that there be a ruling
16 before the witness takes the stand. Because I
17 think that the state has to make the proffer.
18 Because what's going to happen is they're going to
19 ask the question and we're going to have to object
20 and have a sidebar. All they have to do is make
21 the proffer what that connection is. If they can't
22 make that connection, then there is a 403 and a
23 401, 402 relevance issue.

24 And the Court is weighing -- properly
25 weighing the various prejudices and undue prejudice

1 versus the probative value there. And we -- you
2 know -- the state needs to make this proffer
3 because otherwise we're going to do it in front of
4 the jury.

5 MS. POLK: And, Your Honor, I -- I will not
6 ask this information of the witness. I do want to
7 caution Mr. Li, however. He knows that in front of
8 this witness -- he's already asked that the state
9 not establish that Mr. Ray was up at his room. He
10 had showered. He was eating a sandwich when he was
11 contacted and asked to come down to the scene.

12 That would not be appropriate through
13 this witness anyway. He doesn't have firsthand
14 information about I told this witness to stay away
15 from that.

16 Secondly, Mr. Li knows that then, and
17 this witness is present, the lieutenant arrived.
18 And after some brief questioning Mr. Ray said he
19 wanted to call his attorney, which he did, and then
20 ultimately said he was not willing to make any
21 statements.

22 I have cautioned this witness that that
23 is absolutely not to come in under any
24 circumstances, whether through direct examination
25 or cross-examination.

1 But if Mr. Li is going to try to paint a
2 picture for the jury that somehow Mr. Ray was at
3 the scene and cooperative and a picture that is not
4 true, then certainly these -- my offer to withdraw
5 what had happened, I would -- I would withdraw
6 that, my position, and just state that there cannot
7 be some unfair characterization of Mr. Ray's
8 conduct at the scene with Mr. Li knowing what his
9 conduct was.

10 THE COURT: And that -- that could be just a
11 classic open-the-door situation.

12 MR. LI: Yeah. Look, if counsel's suggestion
13 is that I would -- I would lie to this jury, I
14 won't do it. So I think -- I think it's fairly
15 clear I'm just simply asking that certain
16 information relating to the Dream Team members not
17 come in.

18 I think it would be structural error to
19 have the state elicit the fact that Mr. Ray
20 invoked. That would be immediately reversible
21 whether we objected or not.

22 And so we're not going to make a
23 suggestion that's untrue. If that's -- if that's
24 the stipulation the state is asking me to make,
25 that's no problem.

1 THE COURT: I think exuberance sometimes can
2 take over perhaps. I'm just speaking in general,
3 Mr. Li. So -- that's all.

4 MR. LI: I'm not sure I understand.

5 THE COURT: Well, I'm just saying it's what --
6 you know -- when doors get open, people don't
7 intend to do that sometimes. It's just in the
8 examination, and the next thing a question gets
9 asked, and there it is. We've had instances of
10 that in this case.

11 MS. POLK: And, Your Honor, just very quickly
12 on another completely unrelated matter. It's a
13 scheduling matter.

14 At this point we still have to finish our
15 redirect of Dr. Dickson. We're calling
16 Sergeant Barbaro, and then we're calling Sara
17 Mercer for tomorrow. Other witnesses have
18 conflicts. We have no other witnesses lined up for
19 the week, and we're not meeting on Friday. Because
20 most of our witnesses come from out of town, it
21 makes it problematic to try to bring in somebody
22 for a couple of hours Thursday afternoon.

23 I apologize because I know how important
24 every hour is to getting this trial finished. But
25 logistically it's not working to bring in some

1 witness from out of state for the possibility of
2 being able to testify for perhaps a couple hours
3 tomorrow afternoon.

4 Unfortunately, I don't have somebody
5 lined up is what I'm saying beyond two additional
6 witnesses for the rest of the week.

7 THE COURT: Well, is somebody else here
8 ready --

9 MS. POLK: Yes. We have --

10 THE COURT: -- for this afternoon?

11 MS. POLK: We have Sergeant Barbaro this
12 afternoon. And then we have Sara Mercer, who will
13 be here at 9:00 tomorrow. And then we have nobody
14 after that.

15 THE COURT: Okay. I assume we proceed, and
16 when we're done tomorrow, that's it.

17 Mr. Li.

18 MR. LI: That's fine, Your Honor.

19 THE COURT: Okay. Thank you.

20 (Recess.)

21 (Proceedings continued in the presence of
22 jury.)

23 THE COURT: The record will show the presence
24 of Mr. Ray, the attorneys, the jury. And
25 Dr. Dickson is on the witness stand.

1 Mr. Hughes.

2 MR. HUGHES: Thank you.

3 Q. Doctor, I believe when we took the break,
4 we were talking about Stephen Ray's medical
5 records. Ms. Do had asked you some questions --
6 I'm referring to Exhibit 213, Bates No. 7098 --
7 about an opinion by someone named Dr. Kennedy.

8 Do you remember being asked about that,
9 whether her opinion, which is set forth here,
10 victim of mass-casualty incident involving a sweat
11 lodge, and going on from there -- whether that
12 opinion was something that you had considered?

13 A. Yes, it was.

14 Q. And is that something that you
15 considered?

16 A. Yes. It was something I considered.

17 Q. Okay. And specifically -- and then she
18 asked whether Dr. Neff had the same opinion.

19 Do you remember being asked that?

20 A. Yes.

21 Q. Do you know whether this language that's
22 used in assessment and plan -- does that -- I don't
23 want to use the word "cut and paste," which we were
24 using yesterday or was used yesterday.

25 But does this language get carried

1 forward in the chart from one record to another?

2 A. Do I know if got carried forward?

3 Q. Well, let me ask you this: Dr. Kennedy's
4 report contains some verbiage about victim of
5 mass-casualty incident involving a sweat lodge.
6 There was some concern for, basically, anoxia or
7 carbon dioxide poisoning.

8 The patient does not appear to have had
9 heat stroke, and there is no evidence for carbon
10 monoxide poisoning. His acute respiratory failure
11 appears to have resolved.

12 That was diagnosis -- or assessment and
13 plan No. 2. Do you see that?

14 A. Yes.

15 Q. No. 3, acute renal failure likely related
16 to his fasting state, resolved with rehydration.
17 And then you were asked about Dr. Neff's opinion,
18 which is here on Bates 7095.

19 Do you remember being asked about that?

20 A. Yes.

21 Q. And Dr. Neff's opinion is -- uses the
22 exact, same verbiage. Victim -- for No. 2, victim
23 of mass-casualty incident involving a sweat lodge.
24 No. 3 is the exact same verbiage. Acute renal
25 failure, likely related.

1 And then you see he's added a No. 4 onto
2 that assessment and plan?

3 A. Correct.

4 Q. Is that something that's commonly done
5 where if something -- an opinion from one doctor
6 gets carried forward into a medical record that's
7 used by another doctor?

8 A. Yes, it is.

9 MS. DO: Objection. Calls for speculation.

10 THE COURT: Overruled.

11 Answer stands.

12 Q. BY MR. HUGHES: Now, also up on No. 1 it
13 indicates, he may -- it talks about anoxic brain
14 injury. It says, I anticipate the patient will
15 have needs upon discharge. He may be able to live
16 independently but may not be able to care for his
17 elderly mother. Then it says, trial of meclizine.

18 A. Yeah. Meclizine.

19 Q. What's meclizine?

20 A. It's for dizziness. It's commonly used
21 in people that have vertigo or seasickness.

22 Q. Do you know whether a patient who
23 suffered from heat stroke to the point where
24 they've gone into a coma, like Mr. Shore did, and
25 then comes out -- can they suffer long-term effects

1 upon discharge?

2 **A. To my knowledge, I've read that -- they**
3 **talk about it in the articles about long-term**
4 **problems after heat illness. I personally don't**
5 **deal with patients with these long-term rehab**
6 **problems. But from my reading, it does show that.**

7 **Q. And what's an anoxic brain injury?**

8 **A. An anoxic brain injury is when you don't**
9 **get enough oxygen to your brain for a certain**
10 **amount of time, and it causes damage to your brain.**

11 **Q. And is that damage that can always be**
12 **repaired or recovered from?**

13 **A. That's the problem. We can -- none of us**
14 **are producing new brain cells. So it's -- people**
15 **can do somewhat better from it, just like people**
16 **who have had strokes. Different parts of their**
17 **brain start to work that didn't before. But**
18 **generally when the damage is done, the damage is**
19 **done.**

20 **Q. Now, can organophosphate exposure**
21 **cause -- particularly if you had a massive**
22 **ingestion, can that cause an anoxic brain injury?**

23 **A. Yes.**

24 **Q. Can you explain how it could cause anoxic**
25 **brain injury.**

1 **A. Same problem. When you have so much of**
2 **the fluid going into your lungs and you're not**
3 **getting enough oxygen to your brain, you get anoxic**
4 **brain injury. And so the brain doesn't get enough**
5 **oxygen, it can die or part of it can die.**

6 **Q. Can heat stroke cause an anoxic brain**
7 **injury?**

8 **A. Yes.**

9 **Q. And can you explain the mechanism for**
10 **that.**

11 **A. Same mechanism as far as if you're**
12 **getting pulmonary edema fluid in your lungs. And**
13 **there can also be direct injury just from swelling**
14 **in the brain that can cause damage to your brain as**
15 **well.**

16 **Q. And can hypercapnia, or too much carbon**
17 **dioxide, cause an anoxic brain injury?**

18 **A. Well, they kind of go hand in hand. When**
19 **you're -- generally when you're oxygen level is**
20 **going down, your carbon dioxide level is going up.**
21 **So your lungs exchange those two gases all the**
22 **time. Your -- your cells are giving off CO₂, and**
23 **you got to get rid of it and taking up O₂.**

24 **So when your oxygen level drops,**
25 **generally your carbon dioxide level is going up.**

1 **Q. And in this case Ms. Do had asked you**
2 **about a finding in the emergency department, I**
3 **believe she highlighted up on the screen, that the**
4 **pupils in the emergency department for Mr. Ray were**
5 **seen to be pinpoint.**

6 **A. Correct.**

7 **Q. Do you remember being asked that?**

8 **A. Yes.**

9 **Q. Do you know what Mr. Ray's pupils were**
10 **like at the -- prior to arrival in the emergency**
11 **department?**

12 **A. It says that they were dilated.**

13 **Q. And can you explain for us the difference**
14 **between dilated and pinpoint when it comes to**
15 **pupils.**

16 **A. Dilated are big and pinpoint are very**
17 **small, like the point of a pin.**

18 **Q. And we talked about the statement in here**
19 **about the conversation with Dr. Boyer. With**
20 **respect to this record, Dr. Daniel indicated he**
21 **continued to believe that acute hyperthermia and**
22 **subsequent seizure was the most likely cause.**

23 **Can hyperthermia or acute hyperthermia**
24 **cause seizure?**

25 **A. Yes.**

1 **Q. And can you explain how you could have a**
2 **seizure from somebody suffering from acute**
3 **hyperthermia.**

4 **A. Goes back to that whole list of what the**
5 **changes in the mental status are. It can go from**
6 **just acting a little unusual to seizures to**
7 **sleeping or obtunded or all the way to just you're**
8 **not -- you're in a complete coma. So the whole**
9 **spectrum can be present.**

10 **Q. You were asked some questions about --**
11 **Ms. Do about testing for organophosphates. Do you**
12 **remember those questions?**

13 **A. Yes, I do.**

14 **Q. Okay. And you discussed cholinesterase**
15 **and another compound similar to cholinesterase;**
16 **correct?**

17 **A. Correct.**

18 **Q. And can you explain for us how the**
19 **testing looks at those compounds and what the**
20 **significance, if any, is.**

21 **A. Go back to the picture, if that's okay.**

22 **Q. Okay. If we can find it. Why don't you**
23 **look on that one, and I'll look on this one. I got**
24 **it.**

25 **Is this the chart you're talking about?**

1 A. Yes, it is. So what the test that we
2 discussed was -- back to -- we have a cell here and
3 a cell here. And they need to talk to each other.
4 And they talk by sending this as cholinesterase.
5 Produces it, and it goes to the binding site or the
6 receptor and sends its signal across.

7 The problem is is what normally occurs is
8 this acetylcholinesterase is the breakdown -- it
9 breaks down those acetylcholine chemicals getting
10 the information across.

11 When they are bound -- when this thing is
12 bound by organophosphates, it stops working. So
13 what happens is it builds up too much of this --
14 acetylcholinesterase builds up. It's going across
15 but not being broken down.

16 Now, makes sense that you would test
17 this -- you would test how active this is. If they
18 were all bound up, something with the
19 organophosphates or lots of other things, can make
20 them inactive or active.

21 And so that's the test. And you're
22 looking for the activity of how much that's
23 working.

24 Q. And Ms. Do asked you some questions about
25 Exhibit 1008, this -- this Goldfrank's

1 Toxicological Emergencies. And you were asked
2 regarding the reliability of this test and whether
3 the article discussed that.

4 A. Yes.

5 Q. And, Doctor, showing you that report, do
6 you know whether the report talks about whether the
7 person's level of cholinesterase can fluctuate
8 based on genetics or even on your daily circadian
9 rhythm?

10 A. We talked about the -- based on lots of
11 things we read from the other article that there's
12 so many things that can vary that level. I haven't
13 read this whole article, so I couldn't tell you if
14 it says -- it says --

15 Q. And to speed things up, Doctor, let me
16 ask you about the final paragraph.

17 A. Okay.

18 Q. Does that talk about some factors that
19 might affect the reliability of using a test such
20 as this and deriving any meaningful numbers from
21 it?

22 A. It says, genetic and circadian variations
23 are also common with daily fluctuations within the
24 same individual as high as 10 percent. The -- the
25 level can change if it's the morning or the

1 evening.

2 That's what I went through, reading all
3 the different things that can cause this level to
4 change. That's why it's not such a reliable test.

5 Q. And you mentioned that the -- in your
6 answer to one of Ms. Do's questions that in that
7 Goldfrank's article it talks about a low-protein
8 diet can affect cholinesterase levels.

9 A. That was one of the things that was
10 listed.

11 Q. Would a vegetarian diet typically be a
12 low protein diet?

13 A. It can be.

14 Q. And would a person, if they had fasted
15 for a day or a day and a half and then consumed a
16 light meal and then you test maybe 12 hours after
17 they consume a light meal -- can that fasting for
18 36 hours or so affect the cholinesterase levels?

19 A. I couldn't answer that.

20 Q. Are there a number of things that affect
21 cholinesterase levels?

22 A. There's a huge list that we -- we read of
23 all the things that affect this. So that's why
24 it's -- it's not the best test, especially in a
25 single value.

1 Talked a little about earlier where the
2 time you could use it is if you had -- you did have
3 a level and you were -- somebody had been poisoned
4 and you gave them the -- the antidote. Is the
5 level getting higher? That means your treatment is
6 working.

7 You have to have a baseline level. A
8 singular level out there doesn't seem to have a lot
9 of meaning from what we've read here.

10 Q. If I were to present as a patient in your
11 emergency department, would you have any idea what
12 a normal level would be for me?

13 A. No.

14 Q. Or for anyone else in the courtroom?

15 A. No.

16 Q. You mentioned something about the
17 emergency medical treatment that you would expect
18 to see in the patients who were displaying that
19 classic sign of organophosphate, the heavy
20 salivation or drooling.

21 How would that be different from
22 somebody -- the treatment of a patient who wasn't
23 drooling from the mouth heavily?

24 A. Well, the drooling problem is the -- why
25 they're -- they're going to have trouble breathing.

1 **And what you want to do is stop that. You want to**
 2 **stop -- you want to dry them up immediately. And**
 3 **there's a medication called "atropine" that's used**
 4 **to -- to dry it up so you don't get all that**
 5 **secretions.**

6 **So, again, it comes back to**
 7 **organophosphate poisoning, the reason they die, get**
 8 **so sick, is because they have respiratory problems**
 9 **and can't breathe. And you want to address that**
 10 **issue.**

11 MR. HUGHES: Thank you, Doctor. I don't
 12 believe I have any other questions.

13 THE COURT: Are there questions from the jury?

14 Counsel, please approach to read the
 15 questions from the jury.

16 (Sidebar conference.)

17 MR. HUGHES: No objection, Your Honor.

18 MS. DO: I have to read this request one more
 19 time, Your Honor.

20 THE COURT: Take your time.

21 MS. DO: Your Honor, I think the question
 22 doesn't seem appropriate or relevant to the -- the
 23 defense would object to this question, Your Honor.
 24 It does not seem to be relevant to the actual
 25 elements of the charges. It's a request for

1 survival advice. This man has not -- it doesn't
 2 seem to go to that. So --

3 MR. HUGHES: Your Honor, the state does
 4 believe it is relevant. The jury has heard from a
 5 number of the lay witnesses about things that they
 6 did to try and survive while they were inside.
 7 They were laying down close to the floor or they
 8 were sitting up based upon what Mr. Ray had
 9 recommended or not recommended.

10 Actions that they took inside the sweat
 11 lodge, I think it would be directly relevant. What
 12 can you do to improve your outcome if you're in a
 13 very hot environment for a prolonged period of
 14 time?

15 MS. DO: That seems to go to negligence and
 16 not to reckless -- the reckless standard of
 17 manslaughter, which requires a much higher standard
 18 than what this question is direct to. And I think
 19 that the way that the question -- the form of the
 20 question -- it just doesn't go to the charges, Your
 21 Honor.

22 MR. HUGHES: Your Honor, it does go not only
 23 to negligence, but it does go to the reckless
 24 charges, as well. It's pertaining to formative
 25 actions by Mr. Ray in giving this advice, telling

1 people what they need to do.

2 And it also goes to explain -- if the
 3 jury understands what can effect your survival
 4 while you're in there, it helps the jury to
 5 ascertain whether the injuries that they observed
 6 were as a result of people following and doing
 7 these things or not.

8 So if they -- If the doctor says you need
 9 to do "X," "Y," "Z," and you'll come out fine, if
 10 the witnesses who have already testified and said
 11 having done "X," "Y," and "Z," and I didn't come
 12 out fine, I think that would be relevant as to
 13 causation.

14 THE COURT: Ms. Do.

15 MS. DO: Well, Your Honor, again, the
 16 manslaughter charge requires conscious disregard, a
 17 substantial risk of death. This question asks,
 18 first of all, from the perspective of the victim
 19 what they could do. That goes to, I think, a far
 20 lower standard. It goes to negligence.

21 THE COURT: This has been an ongoing thing.
 22 Let's say this, this question of level of charging,
 23 as I've put it. The question is actually quite
 24 careful. It says from a physician's perspective.

25 MR. HUGHES: Your Honor, I think because of

1 that, again, it's limiting it to causation. If you
 2 do "A," "B," and "C," will it make a difference?
 3 If you don't see that difference, then it calls
 4 into question were the injuries caused by heat or
 5 not caused by heat.

6 MS. DO: If Your Honor remembers, we had
 7 raised an issue regarding the doctor's report
 8 wherein he had in there a paragraph about what
 9 could have been done so the victims could have
 10 survived.

11 THE COURT: I remember that. As soon as I saw
 12 the question, I remembered that.

13 MS. DO: And so that obviously was not
 14 appropriate. The Court ruled that would not be
 15 allowed from this witness. And I think this
 16 question, while I understand the jurors' curiosity
 17 even though it's written from a physician's
 18 perspective, it goes to the survivors' conduct.

19 What would you advise a survivor to do?
 20 And I think that that moves in the concerns that we
 21 had regarding the opinion that the Court excluded,
 22 and that goes to, basically, what should have been
 23 done. And this is a manslaughter charge.

24 MR. HUGHES: Your Honor, that may be somewhat
 25 related in the sense of what could have been done.

1 Part of his report talked about recommending the
2 EMS people be there. It goes to something that
3 Mr. Ray could have done. This is referring, again,
4 to actions by participants. Again, it's from a
5 physician's standpoint, actions by a participants.

6 And we've already heard participants have
7 done "A," "B," and "C," and other people did "X,"
8 "Y," and "Z." I think it's directly relevant to
9 assessing what the effects were doing those. It
10 goes right to causation.

11 THE COURT: Because -- with it being on a
12 physician's perspective, I'm going to ask the
13 question.

14 MR. HUGHES: Thank you, Your Honor.

15 (End of sidebar conference.)

16 THE COURT: Doctor, I'll ask the questions.
17 The attorneys may wish to follow up.

18 From a physician's perspective, what
19 survival advice would you give a patient of yours
20 to help prepare her for a forthcoming event in
21 which she will be exposed to an enclosed, extreme
22 heat environment for over two hours?

23 Do you want me to reread it?

24 THE WITNESS: Yeah. Read it one more time,
25 please.

1 THE COURT: From a physician's perspective,
2 what survival advice would you give a patient of
3 yours to help prepare her for a forthcoming event
4 in which she will be exposed to an enclosed,
5 extreme heat environment for over two hours?

6 THE WITNESS: So if a patient came to me, as
7 their doctor -- that's what I'm getting -- and
8 asked that they were going to be exposed to a heat
9 environment for two hours, and what would be my
10 advice?

11 I'm just rewording that. Does that
12 sounding --

13 THE COURT: I really --

14 THE WITNESS: You can't. Okay.

15 THE COURT: I can read the question.

16 THE WITNESS: Sorry. Okay.

17 THE COURT: From a physician's perspective --

18 THE WITNESS: Okay.

19 THE COURT: -- what survival advice would you
20 give a patient of yours to help prepare her for a
21 forthcoming event in which she will be exposed to
22 an enclosed, extreme heat environment for over two
23 hours?

24 If you can answer that.

25 THE WITNESS: I can. There's several things

1 that somebody can do, and this is what we recommend
2 to our people that are going to be exposed to hot
3 environments.

4 One is time to acclimate. It takes a
5 couple weeks. We have patient -- people that move
6 here, especially the Marine Corps. You get these
7 new recruits in in the middle of July, and they
8 haven't had time to acclimate. So time to
9 acclimate can help you survive better.

10 Another thing you can do is keep well
11 hydrated. The -- we talked a little bit -- this is
12 physiologic response to -- to this heat is your --
13 your arteries and veins dilate, and your heart's
14 got to pump a lot. And if you don't have the fluid
15 in there, your heart's got to pump a lot more. So
16 keeping well hydrated ahead of time would be an
17 important thing.

18 And then -- this is part of my lecture
19 that I give -- is if you are going to be exposed to
20 heat, you need to hydrate continuously to keep up,
21 especially if you're working out or being exposed
22 for several hours. Something that if you
23 continuously drink fluids, that would at least help
24 some -- help alleviate some of the problems.

25 And ultimately if I had a patient that

1 said they were going to be in a hot environment for
2 two hours, I would recommend that they -- I would
3 educate them on the signs and symptoms. When they
4 have just little signs and symptoms -- nausea,
5 cramping, malaise -- get out, cool off before you
6 start going into the problems of heat stroke.

7 And that's where the problem can arise is
8 once you get to that level of heat stroke, you
9 might not recognize that you're getting worse
10 because you've got that change in mental status.

11 So I think those would be the things that
12 I would recommend to a patient if they were going
13 to do that.

14 THE COURT: Follow up, Mr. Hughes?

15 MR. HUGHES: Thank you.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. HUGHES:

18 Q. Doctor, would you recommend that they
19 fast for a period of, say, 36 hours before they go
20 into that environment?

21 A. I would not.

22 Q. Why is that?

23 A. Well, I mean, that's going to make you
24 weaker. Anything you're going to do that's
25 strenuous, whether it's being in an enclosed, hot

1 **area for a long period of time or exercising,**
 2 **being -- being at your top physical condition is**
 3 **going to do you the best in that stressful time.**

4 **Q.** How about sleep? Would you recommend
 5 they get a lot of sleep or very little sleep?

6 **A. Absolutely lots of sleep. Again,**
 7 **whenever you're going to do a stressful activity,**
 8 **you want to be at your best.**

9 **Q.** I think you had mentioned earlier in
 10 testimony you advised firefighters and paramedics
 11 to keep an eye on each other when they're out --
 12 down in Yuma working. Would you give similar
 13 advice to people going into this environment?

14 **A. Absolutely.**

15 MR. HUGHES: Thank you.

16 I have no further questions.

17 THE COURT: Ms. Do?

18 MS. DO: Thank you.

19 RE CROSS-EXAMINATION

20 BY MS. DO:

21 **Q.** Good afternoon again, Doctor.

22 **A. Hello.**

23 **Q.** So you would give the following advice as
 24 a doctor: You would tell the person to hydrate,
 25 hydrate, hydrate; right?

1 **A. I would recommend hydrating. Yes.**

2 **Q.** Okay. And so if you had an event that
 3 was going to be the end of a five-day retreat, you
 4 would tell the person to hydrate, hydrate, hydrate,
 5 from the very beginning of the event?

6 **A. Correct.**

7 MR. HUGHES: Object to foundation as to --
 8 hydrate during the sweat lodge or before the sweat
 9 lodge?

10 THE COURT: Okay. As to foundation.

11 MS. DO: Sure. I'll clear it up.

12 **Q.** I understood, Doctor, in answering this
 13 question you said that it was important to be well
 14 hydrated continuously?

15 **A. Correct.**

16 **Q.** So assuming you had a five-day event
 17 where the two-hour heated environment occurred at
 18 the very end of those five days. You would begin
 19 at the very -- at day one telling people to
 20 hydrate, hydrate, hydrate?

21 **A. Correct.**

22 **Q.** You would also tell them to get out if
 23 they needed to; right?

24 **A. Correct.**

25 **Q.** So you would tell them if you have to

1 leave, then leave?

2 **A. That would be part of it.**

3 **Q.** Right. And get out and -- and cool off
 4 if you need to; correct?

5 **A. Correct.**

6 **Q.** And so if there were electrolytes and
 7 fruits made available, you would advise the person
 8 if you need to leave, then leave, go out and cool
 9 off, drink if you need to; right?

10 **A. Absolutely.**

11 **Q.** And since Mr. Hughes asked you, Liz
 12 Neuman, one of the decedents that you reviewed her
 13 case for -- you understood that she did not fast;
 14 correct?

15 **A. It's possible.**

16 **Q.** Do you know that?

17 **A. I've read it, but it could be --**

18 **Q.** Okay.

19 **A. I'll have to take your word for it.**

20 **Q.** Thank you.

21 No reason to dispute that she did not
 22 fast; right?

23 **A. No.**

24 **Q.** And if the juror heard -- if the jury
 25 heard testimony that she also slept before the

1 actual two-hour event, you would also consider
 2 that; correct?

3 **A. Yes. Definitely.**

4 MS. DO: Thank you very much, Doctor.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 Dr. Dickson, you'll be excused as a
 8 witness at this time temporarily. You'll be
 9 technically subject to recall. So that rule of
 10 exclusion of witnesses will continue to apply. So
 11 this isn't the time to talk to -- to other
 12 witnesses in the case that are medical people.
 13 There's been some talk about that during
 14 examination.

15 But -- but a number of witnesses in this
 16 case are subject to possible recall. So it's very
 17 important you continue to follow that rule of
 18 exclusion, not communicate -- not communicate with
 19 any other witness until the case is completely
 20 over, the trial is over.

21 Do you understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: You can talk to the lawyers,
 24 however. You understand that, as well?

25 THE WITNESS: Yes, sir.

1 THE COURT: Thank you. And you will be
2 temporarily excused at this time.
3 THE WITNESS: Thank you, sir.
4 THE COURT: You may step down.
5 MR. HUGHES: Your Honor, the state will be
6 calling Sergeant Barbaro. I believe Ms. Polk has
7 gone out to find him.
8 THE COURT: Sir, would you please step to
9 the front of the courtroom where the bailiff is
10 directing you.
11 And then raise your right hand and be
12 sworn by the clerk.
13 FRANK BARBARO,
14 having been first duly sworn upon his oath to tell
15 the truth, the whole truth, and nothing but the
16 truth, testified as follows:
17 THE COURT: Please be seated here to my right.
18 Sir, would you please begin by stating
19 and spelling your full name.
20 THE WITNESS: Yeah. It's Frank Barbaro,
21 B-a-r-b-a-r-o.
22 THE COURT: Thank you.
23 Ms. Polk.
24 MS. POLK: Thank you, Your Honor.
25 / / /

1 DIRECT EXAMINATION
2 BY MS. POLK:
3 Q. Good afternoon. Will you start by
4 telling this jury your employment.
5 A. **Yes. I work for the Yavapai County**
6 **Sheriff's Office.**
7 Q. And what is your title there?
8 A. **Currently I'm a sergeant in -- in our**
9 **criminal investigations bureau.**
10 Q. How long have you worked at the Yavapai
11 County Sheriff's Office?
12 A. **About if 15 years.**
13 Q. What year did you start there?
14 A. **Started part time in 1995 and went to the**
15 **patrol academy in '90 -- '98.**
16 Q. Before you went -- before you started in
17 1995, what did you do?
18 A. **I was a sales manager at a motorcycle**
19 **dealership.**
20 Q. And you said you started where then? You
21 started at the Yavapai County Sheriff's Office
22 before you went to the academy?
23 A. **Yes.**
24 Q. In what capacity did you work in 1995?
25 A. **I worked in the jail as a detention**

1 **officer.**
2 Q. And when was it that you then went to the
3 academy?
4 A. **In January of '98.**
5 Q. And how long did that academy last for?
6 A. **17 weeks.**
7 Q. And you graduated?
8 A. **Yes.**
9 Q. And then what certification did you get?
10 A. **I became certified as a police officer.**
11 Q. And after getting that certification, did
12 you remain at the Yavapai County Sheriff's Office?
13 A. **Yes, I did.**
14 Q. And in what capacity did you originally
15 gain employment as a certified peace officer with
16 the Yavapai County Sheriff's Office?
17 A. **I was a deputy in the Mayer patrol area.**
18 Q. And explain to the jury what patrol area
19 Mayer encompasses.
20 A. **Basically, we were from Dewey, Cordes**
21 **Junction, that area. And I would answer calls,**
22 **provide assistance, do traffic, conduct**
23 **investigations.**
24 Q. How long did you do that for?
25 A. **For about a year and a half.**

1 Q. And when you worked as a patrol, did you
2 also respond to crime scenes?
3 A. **Yes.**
4 Q. As a patrol officer would you have duties
5 at those crime scenes?
6 A. **Yes.**
7 Q. And explain to the jury what those duties
8 would be.
9 A. **Basically, as a crime scene and patrol**
10 **officer, you want to secure the scene, make sure --**
11 **you know -- render aid, secure the scene, and**
12 **identify witnesses. So then when the other**
13 **detectives got there, whatever, they could conduct**
14 **the investigation.**
15 Q. You then got a promotion?
16 A. **Yes.**
17 Q. To what?
18 A. **Promoted to detective.**
19 Q. And when did that happen?
20 A. **Around 2001.**
21 Q. What did you do, then, between 1998 and
22 2001?
23 A. **I became one of our DUI officers and,**
24 **basically, worked traffic. And the DUI squad**
25 **became our Special Crimes Unit.**

1 Q. And is that a specialty working DUI?
 2 A. Yes.
 3 Q. And explain to the jury how so.
 4 A. We'd go out and work traffic and look for
 5 drivers who were driving while impaired. We would
 6 go out and assist the other deputies. If they made
 7 a DUI stop, we'd help them process the arrest and
 8 take it over for them.
 9 Eventually I became certified as an
 10 instructor and started teaching at the academy and
 11 teaching other deputies on the road how do the DUI
 12 investigations.
 13 Q. How long did you work with that
 14 particular detail?
 15 A. About a year and a half.
 16 Q. And in that capacity did you receive
 17 an -- an honor or an award?
 18 A. Yes.
 19 Q. Tell the jury what that was.
 20 A. I got an award from Mothers Against Drunk
 21 Driving for the DUI enforcement.
 22 Q. And was that for the -- for the work as
 23 an officer in that unit?
 24 A. Yes.
 25 Q. Was that for Yavapai County?

1 A. Yes.
 2 Q. Did you also get trained in the Special
 3 Crimes Unit?
 4 A. Yes.
 5 Q. And explain to the jury what that is.
 6 A. Special Crimes Unit was a unit --
 7 originally we became a traffic unit, and we would
 8 make traffic stops. And if we got a chance to
 9 further drug investigations, we'd go forward with
 10 that.
 11 That eventually -- Special Crimes Unit
 12 eventually became part of our investigations unit
 13 and transitioned to an undercover narcotics unit.
 14 Q. How long did you work with the Special
 15 Crimes Unit?
 16 A. When the Special Crimes Unit got formed,
 17 I was there for a couple months. Then I became a
 18 regular detective. And then before I got promoted
 19 to sergeant, I went back in there and worked.
 20 Q. Have you been or are you also a member of
 21 the SWAT team?
 22 A. Yes. I was a member of the SWAT team for
 23 ten years.
 24 Q. And tell the jury what the SWAT team is.
 25 A. We're a specialized weapons and tactics.

1 We'd go out and -- if there were certain situations
 2 that regular law enforcement wasn't equipped to
 3 handle, like somebody barricaded or search
 4 warrant -- high-risk search warrants, made threats
 5 against officers or hostage situations, our team
 6 would go out there and try to resolve that.
 7 Q. You then became a detective, you said, in
 8 2001?
 9 A. Yes.
 10 Q. And as a detective what were your
 11 assignments?
 12 A. I worked everything from burglaries and
 13 frauds to homicides and sex offenses.
 14 Q. And in that capacity did you receive any
 15 training in how to do interviews, crime-scene
 16 interviews?
 17 A. Yes.
 18 Q. And specifically what training have you
 19 received?
 20 A. Besides the training that we would just
 21 get at work and from mentoring from other
 22 detectives and supervisors, I went to a Reid
 23 Interview School.
 24 Q. And tell the jury what the Reid Interview
 25 School is.

1 A. It just shows -- there's -- shows
 2 different procedures for conducting interviews and
 3 conducting interrogations of different people,
 4 different types of personalities, and how to deal
 5 with them and -- you know -- how to structure the
 6 interview to be able to extract information.
 7 Q. Did you then -- how long were you -- how
 8 long were you a detective with the criminal
 9 investigations unit beginning in 2001?
 10 A. About six years.
 11 Q. Then what did you do?
 12 A. Then I went into Special Crimes Unit.
 13 Then after that I promoted to sergeant and was a
 14 Verde patrol sergeant.
 15 Q. How long did you do that for?
 16 A. For about a year and a half.
 17 Q. From what year to what year?
 18 A. About 2007 till around 2009.
 19 Q. At that time, Sergeant, did you begin to
 20 work specifically with the K-9 unit?
 21 A. Yes.
 22 Q. Tell the jury what that involved.
 23 A. I supervised four K-9 handlers. And what
 24 we used to do is work on I-17 and do narcotics
 25 interdiction and -- basically, it was a traffic

1 unit. And we supervised the -- I supervised the
2 officers and made sure that the dogs were being
3 taken care of and dog training stuff.

4 Q. And just to make sure we understand, tell
5 the jury what a K-9 unit refers to.

6 A. K-9 unit is one officer who's assigned a
7 dog and the dogs that we have are trained to detect
8 the odors of narcotics.

9 Q. How long did you supervise that unit?

10 A. For a little over a year.

11 Q. And as a supervisor did you have duties
12 in addition to simply being -- I shouldn't say
13 simply. But duties in addition to being on the
14 road and doing the work itself?

15 A. Yes.

16 Q. And describe for the jury what those
17 duties were.

18 A. Basically, at the sheriff's office -- if
19 you're a sergeant, you're a sergeant over at the
20 sheriff's office. So if there's anything going on
21 or any other -- you know -- you'd have to respond
22 and help the other deputies with calls or providing
23 backup or -- you know -- respond to any -- because
24 we don't have a supervisor on in every area,
25 sometimes I'd have to go to different areas and

1 supervise things.

2 Q. Did you also take on some administrative
3 duties, such as grant writing?

4 A. Yes.

5 Q. In -- did you get another promotion after
6 that or another assignment?

7 A. Yes.

8 Q. And what to?

9 A. Criminal investigations.

10 Q. Is that what you do today?

11 A. Yes.

12 Q. And what is your position with
13 criminal -- the Criminal Investigations Unit?

14 A. I'm the sergeant over the Criminal
15 Investigations Unit based out of the Verde.

16 Q. How many people do you supervise in that
17 capacity?

18 A. I believe eight.

19 Q. And what are your duties as supervisor of
20 the Verde Criminal Investigations Unit?

21 A. I approve reports, approve search
22 warrants. I supervise our computer forensics
23 person. I supervise our sex crimes unit and our
24 sex offender registration unit, as well as just
25 manage day-to-day cases.

1 We also have a couple cold cases that we
2 keep up on and -- you know -- just try to make
3 sure -- try to provide leadership and make sure
4 that everybody is getting stuff done.

5 Q. You also handle your cases -- you also
6 handle cases in addition to supervising others?

7 A. No.

8 Q. And in terms of supervising others on
9 cases, do you get involved in their cases?

10 A. Sometimes.

11 Q. Let's go back to October of 2009. What
12 was your assignment then -- what were your duties
13 then?

14 A. I was supervising the K-9 unit.

15 Q. And on October 8th of 2009, do you recall
16 where you were?

17 A. Yes. I was working in the Verde area.

18 Q. And at the time did you hear some
19 information that caused you to take some action?

20 A. Yes.

21 Q. Where did you hear information from?

22 A. I heard it on the radio.

23 Q. And when you say "the radio," do you mean
24 KYCA or --

25 A. Police radio.

1 Q. What did you hear?

2 A. One of the deputies said he was somewhere
3 and he had several people down.

4 Q. Do you recall what deputy that was that
5 you heard?

6 A. Yes. It was Deputy Sutton.

7 Q. And were you here close to this
8 courthouse at this time?

9 A. Yes. I was leaving the jail.

10 Q. And what did you do upon hearing that
11 radio traffic from Deputy Sutton?

12 A. I tried to call dispatch and see -- tried
13 to reach Sutton on the radio. And then I tried to
14 call dispatch and find out what was going on.

15 Q. And did you reach anybody?

16 A. Yeah. But they really didn't quite know
17 what was going on. They just said there was some
18 type of -- something was going on out at
19 Angel Valley, and there were some injured people.
20 And they didn't really have a lot of other
21 information.

22 Q. Had you heard of Angel Valley before this
23 day?

24 A. No.

25 Q. What did you do then?

1 **A. I called up the other deputies over the**
2 **radio, the police radio, and told them to all**
3 **respond to that area Code 3 until we found out what**
4 **was going on.**

5 **Q. And, Sergeant, why would -- why did it**
6 **fall to you, then, to call other deputies and tell**
7 **them to go to the scene?**

8 **A. There wasn't another supervisor on at the**
9 **time.**

10 **Q. Do you recall about what time it was that**
11 **you got this information?**

12 **A. Probably around 6:00 at night.**

13 **Q. What did you personally do after ordering**
14 **other deputies to go to the scene?**

15 **A. I made sure that the Verde area was going**
16 **to be covered. So I made some arrangements for**
17 **some other deputies to come out there and cover the**
18 **area until I knew what was going on, and I headed**
19 **out there.**

20 **Q. Do you know how long it took you to get**
21 **out?**

22 **A. Maybe 20, 25 minutes.**

23 **Q. How many deputies had you ordered to go**
24 **to the scene?**

25 **A. I think we wound up having three guys --**

1 **all three guys that were on.**

2 **Q. Do you recall what time it was that you**
3 **arrived at the scene at Angel Valley?**

4 **A. Not really.**

5 **Q. And, Sergeant, as you were -- how did you**
6 **find out where Angel Valley was located?**

7 **A. They had -- they had directions in the**
8 **calls, and there was somebody who was standing out**
9 **there off -- off of Highway 89 flagging people in.**
10 **There was some guy standing next to a motorcycle.**
11 **I had no idea what he was doing there, but he**
12 **was -- somebody said turn over where the guy's at**
13 **with the motorcycle.**

14 **Q. And as you drove into Angel Valley, did**
15 **any vehicles pass you coming out?**

16 **A. Yes.**

17 **Q. Tell the jury what sort of vehicle passed**
18 **you as you were driving in.**

19 **A. Ambulance.**

20 **Q. Do you recall how many ambulances?**

21 **A. I know I saw one, maybe two.**

22 **Q. Did you also see air traffic?**

23 **A. Yes.**

24 **Q. As were you driving in?**

25 **A. Yes.**

1 **Q. And tell the jury what you saw.**

2 **A. It was a medical helicopter.**

3 **Q. Was it arriving or leaving?**

4 **A. I believe it was leaving.**

5 **Q. When you got down to the scene, what**
6 **information did you have before physically seeing**
7 **the scene, visually seeing it?**

8 **A. Didn't really have any information. Just**
9 **that there were some people -- bunch of people down**
10 **and people being medevaced out. And that was it.**

11 **Q. And limiting your comments now to what**
12 **you personally observed when you first arrived at**
13 **the scene, tell the jury what you saw.**

14 **A. There were people around this sweat lodge**
15 **that were -- some people were sitting there. Some**
16 **people were catching their breath. There was --**
17 **EMS was working on some people. And there --**
18 **oxygen bottles laying around. So there's a lot of**
19 **stuff going on. There were some ambulances, fire**
20 **department people.**

21 **Q. And had deputies from your office arrived**
22 **before you did?**

23 **A. Yes.**

24 **Q. Was there a period of time, Sergeant,**
25 **that you were actually the -- in charge of the**

1 **scene in terms of the Yavapai County Sheriff's**
2 **Office?**

3 **A. Yes.**

4 **Q. And for how long?**

5 **A. Probably for about 40, 50 minutes.**

6 **Q. Why was it that you were in charge in**
7 **terms of your office's response for the first 45**
8 **minutes?**

9 **A. Well, the area lieutenant had gone home**
10 **already, and the sergeant that would have been on**
11 **in the area at that time was out on training.**

12 **Q. And so upon your first arrival, were you**
13 **calling the shots in terms of your offices and your**
14 **deputies -- your office and your deputies?**

15 **A. Yes.**

16 **Q. When you first arrived at the scene, were**
17 **you aware of any patients who were down?**

18 **A. Yes.**

19 **Q. How did you become aware of that?**

20 **A. As far as physically or being worked on?**

21 **Q. What was your attention called to first**
22 **when you arrived at the scene?**

23 **A. I saw one person getting CPR done and**
24 **other people getting various aid from the medical**
25 **people.**

1 Q. I'm going to put up on the overhead
2 Exhibit 145. And I realize it is not the scene as
3 you saw it. I'll represent to you that this is the
4 scene before the sweat lodge ceremony began.
5 But you just mentioned that somebody was
6 down doing CPR. Can you orient yourself looking at
7 this photograph as to where that person was?

8 A. Yes.

9 Q. And show the jury where.

10 A. I believe it was probably right around
11 here.

12 Q. And did you ever learn who that person
13 was?

14 A. I'm not sure -- no. I'm not sure.

15 Q. Was the fire department there before you
16 arrived there, Sergeant?

17 A. Yes.

18 Q. And was there somebody in charge of the
19 scene?

20 A. Yes.

21 Q. And who was that?

22 A. They had a battalion chief or a chief
23 over there. And he was doing the incident command
24 out of his truck.

25 Q. Can you explain to the jury in terms of

1 jurisdiction and -- and managing a scene like this,
2 how do you work with the fire department and the
3 incident commander?

4 A. Well, basically, the fire department is
5 going to render aid and try to take care of what
6 are the problems causing the thing. So they're
7 going to be in charge of it at that point.

8 So they're in charge of the first
9 responders. They're setting up the incident
10 commands where we keep track of who's being
11 transported medically, what hospital they're going
12 to, how many people have been transported. And
13 they're going to call in more resources.

14 So we're kind of there at that point to
15 just to kind of secure the scene and render any aid
16 we can.

17 Q. And what did you do, then, upon arriving
18 at the scene?

19 A. Talked to the deputies, told them to make
20 sure they -- I can't remember if there was
21 crime-scene tape up or not. But I had them extend
22 the crime scene.

23 Q. And let me stop you right there. Tell
24 the jury what you mean that you had them extend the
25 crime scene.

1 A. Well, somebody put up some tape. And I
2 don't know if it was EMS or what. But we had
3 them -- I had them extend it and make the area
4 bigger.

5 Q. And did you do that while first
6 responders, while medical personnel, were at the
7 scene working?

8 A. Yes.

9 Q. How is it that you put up crime-scene
10 tape if you have first responders rendering medical
11 aid to victims?

12 A. There was -- I believe that there was one
13 spot that already had some crime-scene tape up.
14 And I think they were working on somebody on the
15 other side of that. But they tried to put it
16 around -- you know -- if there are people there,
17 you just put it around. So it was a pretty wide
18 perimeter.

19 Q. And when you are instructing somebody to
20 put up crime-scene tape when, in fact, you have
21 medical personnel working on victims, what is the
22 priority at that time?

23 A. The medical people.

24 Q. The medical people are the priority?

25 A. Yes.

1 Q. Do you know when it was that you
2 instructed one of your deputies to expand the
3 crime-scene tape?

4 A. No.

5 Q. And in terms of your arrival, do you
6 recall today how much time had passed before
7 extending the crime-scene tape became one of your
8 priorities?

9 A. A little bit.

10 Q. Some other things had happened first?

11 A. Yes.

12 Q. At that scene what was, then, your first
13 priority?

14 A. Well, I started talking to people and
15 just trying to figure out what's going on. We
16 didn't know -- you know -- we didn't know if this
17 was some weird cult thing or some mass suicide, or
18 we didn't know what happened to these people or
19 why.

20 So we had to preserve what was there just
21 in case it needed to be investigated. We had to
22 render aid. We -- like, somebody said there was a
23 guy who crawled through some rocks and burnt his
24 arm. And we couldn't find that guy.

25 Some people were going up into this

1 **lodging area. I guess there's a hotel on this**
 2 **property. So I sent my guys up there to -- you**
 3 **know -- first of all, go and make a search of this**
 4 **whole area and see if there's any other people. I**
 5 **told them to contact everybody up in the lodge to**
 6 **make sure that they were okay.**

7 **Q.** And let me stop -- stop you there. You
 8 just referred to this property as a hotel. Will
 9 you tell the jury whether you ever actually went to
 10 the lodging area at Angel Valley.

11 **A. No, I didn't.**

12 **Q.** Where did you stay the whole time you
 13 were there?

14 **A. Mainly down there by the area where the**
 15 **sweat lodge was.**

16 **Q.** And you made the decision to send
 17 deputies to go up to the lodging to find additional
 18 people?

19 **A. Yes.**

20 **Q.** What instructions did you give your
 21 deputies?

22 **A. I said, check everybody up there to make**
 23 **sure they're okay.**

24 **Q.** Did you tell your dep -- deputies how to
 25 go about checking on everybody?

1 **A. I told them to make sure that they went**
 2 **into every room and contacted -- you know -- made**
 3 **sure that if there was somebody in the room or not**
 4 **in the room, make sure that they contacted people.**

5 **Q.** Did you instruct your deputies what to do
 6 if you -- if they found somebody who appeared not
 7 to be okay?

8 **A. Well, I'm sure they would just -- you**
 9 **know -- call for EMS to go up there.**

10 **Q.** What else, then, in terms of priorities
 11 did you do at the scene?

12 **A. Contacted the lieutenant for the area and**
 13 **told him what was going on and told him that we**
 14 **needed some follow-up at the hospital.**

15 **Q.** And what else?

16 **A. After that I also requested that**
 17 **investigations comes out after I found out that**
 18 **some people had died.**

19 **Q.** Do you recall about what time it was that
 20 you learned that people had passed away?

21 **A. Probably within about 30 minutes. After**
 22 **we got the thing settled down a little bit, I was**
 23 **able to talk to the fire department, the IC. And**
 24 **he said there had been a couple people who died and**
 25 **a couple people weren't looking too good.**

1 **Q.** Did you also order that photographs be
 2 taken?

3 **A. Yes.**

4 **MS. POLK:** Your Honor, counsel has stipulated
 5 to the admission of Exhibit 274 and 276.

6 **THE COURT:** 274 and 276 are admitted.
 7 (Exhibits 274 and 276 admitted.)

8 **Q.** BY **MS. POLK:** Sergeant, when you arrived,
 9 do you recall how much daylight there was?

10 **A. Yeah. It was light for a little bit**
 11 **longer, probably 40 minutes, an hour.**

12 **Q.** And just jumping ahead, what time did you
 13 leave the scene?

14 **A. I think around midnight or 1:00 o'clock.**

15 **Q.** I'm going to put up on the overhead
 16 Exhibit 276, which has just been admitted. And I
 17 know it's not the greatest of photographs.

18 Does this appear to be one of the
 19 photographs that your deputies took after you asked
 20 them to take some photographs?

21 **A. Probably.**

22 **Q.** Do you recognize -- I -- again, I know
 23 it's not a good photograph. Do you recognize
 24 what's depicted in that photograph?

25 **A. Yeah. It looks like the sweat lodge and**

1 **the fire pit in front of it.**

2 **Q.** And you had said -- earlier mentioned
 3 that somebody over on the tarp to the left was
 4 receiving CPR when you arrived?

5 **A. Yeah. I don't think they were on the**
 6 **tarp. I think they were further past the fire pit**
 7 **in that direction.**

8 **Q.** Does this photograph show that area or
 9 does it not?

10 **A. No.**

11 **Q.** Sergeant, I just want to bring this
 12 photograph up to you and ask you if you're able to
 13 recognize what's over there.

14 **A. That looks like an oxygen bottle.**

15 **Q.** Okay. Does that look like a person by
 16 it?

17 **A. Yes.**

18 **Q.** And, as you testify here today, do you
 19 have any recollection of what was going on in that
 20 area where you see a person and an oxygen bottle?

21 **A. Yes.**

22 **Q.** What do you recall?

23 **A. I think that might be one of the people**
 24 **that were getting CPR.**

25 **Q.** When you were at the scene, do you recall

1 if there was more air traffic?

2 MR. LI: Your Honor, just for the record, if
3 we could just see where the detective -- or the
4 sergeant was pointing.

5 THE COURT: Okay. Ms. Polk is doing that, I
6 believe.

7 MR. LI: Thank you.

8 Q. BY MS. POLK: I just put Exhibit 276 back
9 up on the overhead. Can you circle on your screen
10 the area that you just said you believed somebody
11 was getting CPR at.

12 Was there additional air traffic while
13 you were at the scene?

14 A. I believe so.

15 Q. Do you recall more helicopters taking off
16 with patients?

17 A. I think they transported one more while I
18 was there.

19 Q. Okay. And I'm going to put up on the
20 overhead Exhibit 274. I'll ask you if this appears
21 to be another photograph taken by one of your
22 deputies?

23 A. Yes.

24 Q. I'm going to put up on the overhead
25 Exhibit 275. Do you recognize this photograph?

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1 A. Yes.

2 Q. And do you recognize any of the people in
3 this photograph?

4 A. I believe the deputy is Deputy Sutton.

5 Q. Will you circle where you see
6 Deputy Sutton on this -- this photograph.

7 And do you have any recollection of what
8 is in this photograph and where I just circled?

9 A. I think they're working on somebody there
10 too.

11 Q. Then I'm going to put up on the overhead
12 Exhibit 274. Does this photograph also look
13 familiar to you?

14 A. Yes.

15 Q. I put up on the overhead Exhibit 278,
16 Sergeant, and ask you if you recognize that to be
17 the sweat lodge that you saw on October 8th
18 of 2009?

19 A. Yes.

20 Q. Did you ever go over to the sweat lodge?

21 A. Yes.

22 Q. For what purpose?

23 A. Well, I wanted to make sure nobody else
24 was still in it.

25 Q. How did you do that? How did you make

1 sure nobody was still inside?

2 A. I just walked up to it and stuck my head
3 in there and made sure no one was there.

4 Q. Did you put your head in the door or
5 through one of the side areas that had been opened
6 up?

7 A. Through the door.

8 Q. Did you see anybody in when you put your
9 head in the door?

10 A. No.

11 Q. When you put your head in the door, did
12 you also take note of whether or not there were any
13 odors present?

14 A. Yeah. I didn't smell anything that --
15 that I didn't expect to smell.

16 Q. Were you purposely looking for smells
17 when you put your head in the door?

18 A. No.

19 Q. And when you say you didn't smell
20 anything you didn't expect to smell, what do you
21 mean?

22 A. It just smelled like air in there.

23 Q. Did you make any general observations
24 about people who -- did you make any observations
25 about whether or not people still at the scene had

300

1 been inside the sweat lodge?

2 That was probably a poor question.

3 Were you able to determine whether
4 anybody still at the scene had been inside the
5 sweat lodge?

6 A. Yes.

7 Q. And did you make any general observations
8 about -- for those who were not being worked on by
9 emergency medical personnel, did you make any
10 general observations about them?

11 A. Yes.

12 Q. And, generally, what did you observe?

13 A. They just looked like they were fine.

14 Q. Did you have a concern for carbon
15 monoxide poisoning when you first arrived at the
16 scene?

17 A. Yes.

18 Q. And have you had some training in
19 recognizing somebody who might be suffering from
20 carbon monoxide poisoning?

21 A. Yes.

22 Q. And specifically, is there a symptom that
23 you've been trained to look for to determine
24 whether someone has been exposed to carbon
25 monoxide?

1 **A. In extreme cases they'll turn bright red.**

2 **Q.** And did you make an observation as to --
3 you -- you said you had concern about possible
4 carbon monoxide poisoning. What did you do about
5 that?

6 **A. Well, I just -- when I was looking at the**
7 **people that were really sick or the people that**
8 **were getting worked on, I just looked at their**
9 **skin. But their skin didn't have that bright red**
10 **color.**

11 **Q.** And specifically, you would look for a
12 bride red color?

13 **A. Yes.**

14 **Q.** You didn't see any?

15 **A. Yes.**

16 **Q.** Did you observe whether the fire
17 department specifically did a test to determine if
18 there was carbon monoxide poisoning?

19 **A. Well, they used an air quality meter.**

20 **Q.** And tell the jury what that is.

21 **A. Basically, it's a hand-held tool. And**
22 **it's got a thing that sticks out of it, like a**
23 **sniffer. And it samples the air to look for**
24 **different types of chemicals.**

25 **Q.** And do you know what was found, if

1 anything?

2 **A. I don't believe anything was found.**

3 **Q.** While you were at the scene, Sergeant,
4 did additional help arrive from the Yavapai County
5 Sheriff's Office?

6 **A. Yes.**

7 **Q.** Tell the jury who else came and what else
8 arrived.

9 **A. Had some volunteers show up. The**
10 **detectives showed up. The lieutenant showed up.**

11 **Q.** Do you have something called the "mobile
12 command unit"?

13 **A. Yes.**

14 **Q.** Did it arrive?

15 **A. Yes.**

16 **Q.** And what was its purpose?

17 **A. Basically, to give everybody a place to**
18 **conduct interviews and have somewhere to set up an**
19 **office.**

20 **Q.** And do you know how long the mobile
21 command unit stayed at the scene?

22 **A. I believe it was a couple days.**

23 **Q.** Did you make contact with participants at
24 the scene?

25 **A. Yes.**

1 **Q.** And did you also see people in blue
2 T-shirts at the scene?

3 **A. Yes.**

4 **Q.** At some point did somebody approach you
5 who identified himself to you?

6 **A. Yes.**

7 **Q.** And specifically identified himself as
8 having a relationship to Mr. Ray, the defendant in
9 this case?

10 **MR. LI: Objection. Calls for hearsay.**

11 **THE COURT: Sustained.**

12 **Q.** BY MS. POLK: Was your attention drawn to
13 an individual at some point?

14 **A. Yes.**

15 **Q.** And how was your attention drawn to that
16 individual?

17 **A. A couple of Dream Team members wanted me**
18 **to talk to this gentleman who I thought was named**
19 **Jason. And he -- when I met him, he said that he**
20 **was Mr. Ray's --**

21 **MR. LI: Objection. Calls for hearsay.**

22 **THE COURT: Sustained.**

23 **Q.** BY MS. POLK: Without telling us what
24 Jason said he did, did Jason approach you?

25 **A. Yes.**

1 **Q.** And did you have a conversation with
2 Jason?

3 **A. Yes.**

4 **Q.** Did you have a question, Detective, as to
5 who was in charge of the -- of the sweat lodge
6 and -- and the event?

7 **A. Yes.**

8 **Q.** Who did you ask that question of?

9 **A. To Jason.**

10 **Q.** And did he give you an answer?

11 **A. Yes.**

12 **Q.** And what did he say?

13 **MR. LI: Objection, Your Honor. I'll**
14 **stipulate -- we'll stipulate that Mr. Ray was in**
15 **charge of the sweat lodge ceremony.**

16 **THE COURT: The objection is sustained,**
17 **though, as to hearsay.**

18 **There was an offer of a stipulation,**
19 **Ms. Polk.**

20 **MS. POLK: Your Honor, the state does not**
21 **accept the stipulation. I'm just trying to lay**
22 **foundation as to who Jason was.**

23 **I can move on.**

24 **THE COURT: All right.**

25 **Q.** BY MS. POLK: Did you ask a question of

1 this person you believed was named Jason?
 2 **A. Yes.**
 3 **Q.** And what did you ask him?
 4 **A. Who was in charge.**
 5 **Q.** And without telling us the answer, what
 6 did you do next?
 7 **A. I had the deputies go look for him.**
 8 **Q.** And who did you send the deputies to look
 9 for?
 10 **A. For James Ray.**
 11 **Q.** Did you at that time determine whether or
 12 not James Ray was at the scene of the sweat lodge?
 13 **A. Yes.**
 14 **Q.** And was he?
 15 **A. No.**
 16 **Q.** What instructions did you give to your
 17 deputy to go look for him?
 18 **A. I told him to go up to the lodging area**
 19 **and find him.**
 20 **Q.** After some time did James Ray come back
 21 to the scene?
 22 **A. Yes.**
 23 **Q.** And did you observe him come back to the
 24 scene?
 25 **A. Yes.**

1 **Q.** And how did he get back to the scene?
 2 **A. He came in a golf cart.**
 3 **Q.** And who -- was he with somebody or was he
 4 alone?
 5 **A. I believe he was with the owner of**
 6 **Angel Valley.**
 7 **Q.** Did you approach James Ray at that time?
 8 **A. Yes.**
 9 **Q.** And how did you know it was James Ray who
 10 had arrived?
 11 **A. I think he was pointed out.**
 12 **Q.** And then what did you do when you
 13 approached James Ray?
 14 **A. Just asked him what was going on.**
 15 **Q.** And let's go through it question by
 16 question if -- if you can.
 17 What was the first question you asked the
 18 defendant? Did you ask him his name?
 19 **A. Yes.**
 20 **Q.** And what was the response?
 21 **A. He told me he was James Ray.**
 22 **Q.** And, for the record, do you see James Ray
 23 here in the courtroom?
 24 **A. Yes.**
 25 **Q.** And, for the record, is he this man

1 seated in the --
 2 **MR. LI:** We'll stipulate that this is James
 3 Ray.
 4 **MS. POLK:** The state will accept -- accept
 5 that stipulation.
 6 **THE COURT:** Okay.
 7 **MS. POLK:** And --
 8 **THE COURT:** That's so stipulated.
 9 **MS. POLK:** Thank you.
 10 **Q.** Is it this man, then, that you had a
 11 conversation with?
 12 **A. Yes.**
 13 **Q.** Your first question was what?
 14 **A. I believe I just asked him -- you know --**
 15 **what his name was, what he did for a living.**
 16 **Q.** And what was his answer?
 17 **A. He said, help people change their lives**
 18 **and --**
 19 **Q.** And then what did you ask him?
 20 **A. I asked him who was conducting the sweat**
 21 **lodge.**
 22 **Q.** And what did he say?
 23 **A. He said it was Ted.**
 24 **Q.** And what did you say?
 25 **A. I asked him how many people were in the**

1 **sweat lodge.**
 2 **Q.** And what was his answer?
 3 **A. Around 40.**
 4 **Q.** And was there -- did you ask him anything
 5 else?
 6 Did you ask the defendant where he lived?
 7 **A. Yes.**
 8 **Q.** And what did he say?
 9 **A. He said, Las Vegas.**
 10 **Q.** Sergeant, have you been in a sweat lodge
 11 before?
 12 **A. Yes.**
 13 **MR. LI:** Objection. Relevance.
 14 **THE COURT:** I'm going to let that -- that
 15 answer can stand.
 16 Overruled.
 17 **Q.** BY MS. POLK: When you asked the
 18 defendant who was conducting the sweat lodge, did
 19 that choice of words mean something to you?
 20 **MR. LI:** Objection. Relevance.
 21 **THE COURT:** Overruled.
 22 You may answer that.
 23 **THE WITNESS:** Yes.
 24 **Q.** BY MS. POLK: And what did that mean?
 25 **A. Well, I was wondering if that's the guy**

1 **that was actually running the sweat lodge and**
 2 **pouring the water on the rocks and deciding when to**
 3 **open the door and doing that stuff.**

4 Q. And what was -- what were the words you
 5 used to the defendant when you asked him that
 6 question?

7 A. **I asked him who was conducting the sweat**
 8 **lodge.**

9 Q. And what was his answer?

10 A. **He said it was Ted.**

11 Q. Did he tell you who Ted was?

12 A. **I don't know if he did, but I eventually**
 13 **figured out who Ted was.**

14 Q. Let's stick with the conversation that
 15 you had with the defendant. I believe you said you
 16 asked him how many people were inside?

17 A. **Yes.**

18 Q. And what was his answer?

19 A. **40.**

20 Q. Did you ask him anything about the length
 21 of the sweat lodge ceremony?

22 A. **Yeah. He said it was two hours.**

23 Q. And did you ask him anything about where
 24 the defendant had been during the ceremony?

25 A. **Yes. He said he was in the sweat lodge**

310

1 **the whole time.**

2 Q. The whole time?
 3 How did you learn who Ted was?

4 A. **Somebody pointed him out -- pointed him**
 5 **out to me. And he had brought some food down for**
 6 **Mr. Ray while we were doing this thing and --**

7 Q. Who had brought food down?

8 A. **I believe Ted did.**

9 Q. How long, Sergeant, did it take you to
 10 identify a person named Ted at the scene?

11 A. **It wasn't too long. I think we**
 12 **originally saw him during -- when we first got**
 13 **here.**

14 Q. Did you have contact or a conversation
 15 with Ted? You personally?

16 A. **No.**

17 Q. Did you at the scene interview someone
 18 named Fawn Foster?

19 A. **Yes.**

20 Q. Do you recall, Sergeant, where you were
 21 when you interviewed Fawn Foster?

22 A. **Somewhere by the comfort station.**

23 Q. And I'm going to put up on the overhead
 24 Exhibit 275. Does that show the area where you
 25 were when you interviewed Fawn Foster?

1 A. **Yes. Around there.**

2 Q. Do you recall where Fawn Foster was when
 3 you interviewed her?

4 A. **Somewhere in the area. I think she's by**
 5 **the golf cart. But I think at that time the golf**
 6 **cart might have been moved over toward the side of**
 7 **the comfort station area.**

8 Q. Did you ask -- what did you ask Fawn
 9 Foster when you interviewed her?

10 MR. LI: Objection. Hearsay.

11 MS. POLK: My question is what did he ask Fawn
 12 Foster.

13 THE COURT: And that's overruled.

14 You may answer that question.

15 Q. BY MS. POLK: Now, this is just what you
 16 asked Fawn Foster, not how she responded.

17 A. **She said that she --**

18 THE COURT: Wait. Excuse me. I mean it. And
 19 Sergeants, I said very specifically answer that
 20 question.

21 THE WITNESS: I'm sorry.

22 THE COURT: So Ms. Polk, ask it again.

23 And then please listen carefully to the
 24 question.

25 Q. BY MS. POLK: I'm not asking you to tell

312

1 the jury what Fawn Foster told you, because that's
 2 her testimony. But what questions did you ask Fawn
 3 Foster?

4 A. **I asked her what she did. I asked her**
 5 **how long the sweat lodge was. And that was about**
 6 **it.**

7 Q. How long would you say your contact with
 8 Fawn Foster was?

9 A. **Just a few moments.**

10 Q. Did you attempt to record the
 11 conversation with Fawn Foster?

12 A. **Yes.**

13 Q. And were you successful?

14 A. **No.**

15 Q. What happened?

16 A. **For some reason it didn't get on my**
 17 **recorder.**

18 Q. What else did you do at the scene that we
 19 have not talked about?

20 MR. LI: Objection. Form of the question.

21 MS. POLK: I'll ask -- I'll ask more direct
 22 questions.

23 THE COURT: Thank you.

24 Q. BY MS. POLK: Did you conduct any other
 25 interviews at the scene?

1 **A. No.**
 2 **Q.** And did additional personnel from your
 3 office continue to arrive?
 4 **A. Yes.**
 5 **Q.** At what point were you no longer the --
 6 the person from your office in charge of the scene?
 7 **A. Around the time Lieutenant Parkinson got**
 8 **there.**
 9 **Q.** Lieutenant Parkinson?
 10 **A. Yes.**
 11 **Q.** And you said that was about 45 minutes
 12 after you had arrived?
 13 **A. Yes.**
 14 **Q.** At that point, then, who was directing
 15 the activity at the Yavapai County Sheriff's
 16 Office?
 17 **A. The lieutenant was.**
 18 **Q.** What time did you leave the scene?
 19 **A. Between midnight and 1:00 o'clock.**
 20 **Q.** And have you had further involvement in
 21 this case since leaving that scene around midnight
 22 or 1:00 a.m.?
 23 **A. No.**
 24 MS. POLK: Thank you, Your Honor.
 25 Thank you, Sergeant.

1 THE COURT: Thank you, Ms. Polk.
 2 Mr. Li.
 3 CROSS-EXAMINATION
 4 BY MR. LI:
 5 **Q.** Good afternoon, Sergeant.
 6 **A. Good afternoon.**
 7 **Q.** How are you?
 8 **A. Good.**
 9 **Q.** Now, you testified that you saw somebody
 10 conducting CPR on -- you saw some EMTs conducting
 11 CPR on the scene?
 12 **A. Yes.**
 13 **Q.** And I believe it was your testimony that
 14 you saw it in an area in front of the sweat lodge
 15 by the door.
 16 **A. Yes.**
 17 **Q.** Now, we talked a few weeks ago on a
 18 Friday. You remember that?
 19 **A. Yes.**
 20 **Q.** And we recorded it?
 21 **A. Yes.**
 22 **Q.** And -- and -- you know -- you may have
 23 misrecalled or -- or whatever, but I think
 24 during that interview you told us that you saw the
 25 folks who were receiving the CPR. They were

1 actually behind the sweat lodge. Is it in front or
 2 behind? I just want to make sure we're clear on
 3 this.
 4 **A. The picture that I was shown where the**
 5 **fire bit was.**
 6 **Q.** Yeah.
 7 **A. So it would be more --**
 8 MR. LI: Can I get 145 up. This might help.
 9 **Q.** Is that -- is that a --
 10 **A. Yes.**
 11 **Q.** -- picture will help you? Okay.
 12 **A. Okay. So it was not on this tarp but**
 13 **passed that area.**
 14 **Q.** Somewhere around here?
 15 **A. No. Farther on the other side of the**
 16 **fire. There was just one person -- they had a**
 17 **bunch of people they were working on. But there**
 18 **was one person that was probably out -- out there**
 19 **farther that's not shown in the picture.**
 20 **Q.** All right. Can you just help me just
 21 directionally. So we're -- we're sort of going --
 22 I'm going to draw an arrow.
 23 Kind of like this direction?
 24 **A. Yeah. Probably a little more this way.**
 25 **Q.** Okay. So I'm going to clear that again.

1 This way?
 2 **A. Yes.**
 3 **Q.** Okay. And about how far?
 4 **A. I'm not really sure. It was somewhere**
 5 **over that area.**
 6 **Q.** Okay. So it was definitely not here?
 7 **A. Well, they were working on people in all**
 8 **different areas when I got there.**
 9 **Q.** CPR, though. I just want to focus on
 10 CPR.
 11 **A. I'm pretty sure that they were doing CPR**
 12 **on somebody here, but --**
 13 **Q.** Okay. Don't point. The problem is we
 14 can't see where you're pointing.
 15 **A. I don't think -- well, I don't remember**
 16 **if somebody was getting CPR in this area too.**
 17 **Q.** Okay. So you don't recall one way or
 18 another whether folks were getting CPR in this
 19 particular area?
 20 **A. Yes.**
 21 **Q.** Okay. So no -- no knowledge one way or
 22 the other?
 23 **A. Yes.**
 24 **Q.** Okay. But you did know of one person --
 25 and I believe you said it was a woman.

1 A. Yes.

2 Q. And she was getting CPR in -- in this

3 area. So -- and -- you know -- the perspective

4 would be sort of --

5 A. Yeah. The perspective got me messed up.

6 But yeah. Somewhere around that area, from what I

7 remember.

8 Q. Now, you know that EMTs, when they

9 give -- CPR is for somebody whose heart is stopped?

10 A. Yes.

11 Q. Right? You don't give somebody CPR if

12 their heart is racing -- you know -- at 130 beats

13 per -- per minute or something like that, would

14 you?

15 A. That sounds -- sounds right.

16 Q. I mean, you've been trained in CPR?

17 A. Yes.

18 Q. And that's part of your duties as a -- as

19 a patrol deputy, as a sergeant, all of the sorts of

20 things; right?

21 A. Yes.

22 Q. And if somebody is down, you've got to

23 know when to -- when to do CPR on them; right?

24 A. Yes.

25 Q. And the time to do CPR on them is when

1 their heart is stopped; correct?

2 A. Sounds like a good idea.

3 Q. Right. And when they're not breathing --

4 A. Yes.

5 Q. -- correct?

6 Now, you know that EMTs, when they arrive

7 at a scene and they do things, they have to write a

8 report?

9 A. Yes.

10 Q. Just like you do; correct?

11 A. Yes.

12 Q. And they have to make that report as

13 accurate as possible.

14 A. Yes.

15 Q. Just like you do; correct?

16 A. Yes.

17 Q. So that when if they have to come talk to

18 this jury or something like that, everybody knows

19 what happened a year and a half ago; right?

20 A. Yes.

21 Q. Just like you do?

22 A. Yes.

23 Q. Now, if I represent to you -- so -- so

24 one thing that they would have to write down is if

25 there was a patient who was in full code, that

1 means no heartbeat, no breathing, they'd have to

2 write that down, wouldn't they?

3 A. Yes.

4 Q. And it's not something you would forget

5 to write down if you were either a deputy; correct?

6 A. Yes.

7 Q. You wouldn't -- you wouldn't forget to

8 write that down; right?

9 And an -- an EMT is supposed to write

10 that down too; correct?

11 A. Well -- you know -- I'm just guessing.

12 But I would guess so.

13 Q. If I told you -- and this is not a big

14 deal. Okay? But if I told you that there were

15 only two people on the entire scene who received

16 CPR and those two people were located where the

17 circle is, would you have any reason to dispute

18 that?

19 A. No.

20 Q. Okay. So is it possible that your

21 recollection that the person who was receive --

22 receiving CPR was sort of located where the arrow

23 is drawn? Is that possible that your recollection

24 is wrong?

25 A. It's possible. But for some reason that

1 area stuck out to me.

2 Q. Okay. But the perspective might be off.

3 It was -- it was later in the day. All of those

4 sorts of things; right?

5 A. Yes.

6 Q. And you wouldn't have any reason to

7 disagree with the various medical records that have

8 been admitted into this case or the testimony of

9 the various EMTs who've -- who've been here, would

10 you?

11 A. No.

12 Q. And so if those records say that the only

13 two people who received CPR were in that sort of --

14 in this location, you wouldn't have any reason to

15 dispute that, would you?

16 A. No.

17 Q. Okay. So you could be incorrect about

18 the location --

19 A. Yeah.

20 Q. -- of the -- of the -- of the folks who

21 were receiving CPR?

22 A. Yes.

23 Q. All right. Now, you told Ms. Polk that

24 you don't recall exactly when you arrived on scene?

25 A. Yes.

1 Q. Okay. Would it refresh your recollection
2 to look at your report where you write the
3 approximate time you -- you arrived?
4 A. Yes.
5 MR. LI: If I could approach, Your Honor?
6 THE COURT: Yes.
7 THE WITNESS: Actually, I have a copy of my
8 report, so I'm going to look at it.
9 Q. BY MR. LI: Okay. Great. Yeah. Take a
10 peek at it.
11 And just so we're looking in the same
12 place, I'm going to --
13 If I may approach?
14 THE COURT: You may.
15 Q. BY MR. LI: Okay. So --
16 A. Yeah. It says -- be about 6:10 at night.
17 Q. All right. So you arrived on scene at
18 about 6:10 at night; correct?
19 A. Yes.
20 Q. And this was after you had gone -- you'd
21 heard the dispatch on the radio; right?
22 And then -- correct?
23 A. Yes.
24 Q. And then you made the arrangements you
25 needed to make to make sure that the Verde was

1 covered; correct?
2 A. Yes.
3 Q. And then you ordered some deputies to the
4 scene to -- to help secure the scene and to -- you
5 know -- assist in any way necessary; correct?
6 A. Yes.
7 Q. And then you also went there to supervise
8 all that; correct?
9 A. Yes.
10 Q. And you arrived at approximately 6:10?
11 A. Yes.
12 Q. Now, you had told me, and you can tell
13 this jury whatever your recollection is, that this
14 person that you saw the CPR being conducted on was
15 a female?
16 A. Yes.
17 Q. And there was a two-man EMT crew
18 conducting CPR?
19 A. That's what I thought. Or two people
20 helping her.
21 Q. Okay. And -- you know -- in CPR or
22 CCR -- are you familiar with the term CCR?
23 A. No.
24 Q. It's kind of a fancy version of CPR. All
25 right? So folks in Verde Valley now use that.

1 Okay?
2 You had told me that there -- there was a
3 two-man team and they were working on this female
4 who was down; correct?
5 A. Yes.
6 Q. Now, I had asked you whether or not you
7 had seen an AutoPulse on this -- on this person who
8 was down, this female?
9 A. Yes.
10 Q. Do you remember that?
11 And -- and did you see an AutoPulse on --
12 on this -- on this person who was down?
13 A. No. Not that I recall.
14 Q. Okay. Do you -- you -- can you tell the
15 jury what an AutoPulse is.
16 A. It's like a backboard, and it has a strap
17 on it, and it does chest compressions
18 automatically.
19 Q. And it also has various leads into it
20 that hook up to a heart-rate monitor; correct -- or
21 a heart monitor; correct?
22 A. Yes.
23 Q. And -- and the purpose is to keep that
24 compression going; right?
25 A. Yes.

1 Q. At about a hundred compressions per
2 minute.
3 A. I guess.
4 Q. Okay. Now, do you know that the -- the
5 EMT who worked on the woman who was down back
6 there -- his name was Dustin Chambliss.
7 Did you know that?
8 A. No, I didn't.
9 Q. Do you know Dustin?
10 A. No, I don't.
11 Q. Big, tall guy, nice guy. Never met him?
12 A. Well, maybe. Don't know him.
13 Q. All right. And he -- he wrote a report,
14 which is in evidence.
15 If I could have Exhibit 374 up.
16 Have you seen these kinds of reports
17 before here?
18 A. No.
19 Q. Not this particular one, but have you
20 seen a -- sort of a Verde Valley Fire District EMT
21 report before?
22 A. Yes.
23 Q. Okay. That's all I'm asking.
24 And I'm going to just walk it up here
25 because it's probably a little easier to see.

1 You know, usually the guys who are the
2 EMT guys -- they sign it. You see his name, Dustin
3 Chambliss?

4 A. Yes.

5 Q. Right? And here he is. He's working on
6 a patient who is unresponsive, pulseless --
7 pulse -- pulseless, and apneic. Do you see that?

8 A. Yes.

9 MR. LI: And, Ms. Do, it's -- it's just right
10 in the middle. Actually -- well, that's fine too.

11 Q. And so the person was -- the patient was
12 unresponsive. CPR was in progress. All of that?

13 Do you see that?

14 A. Yes.

15 Q. Okay. So you -- you don't have any
16 reason to dispute that this report of the CPR that
17 was conducted is accurate and that Dustin
18 Chambliss, who testified here -- you know -- gave
19 the jury accurate information about what happened?

20 A. Yeah. I don't have any disputes with
21 that.

22 Q. Okay. And this patient was -- I'm going
23 to just mark right here. She was on an AutoPulse.

24 Do you see that?

25 A. Yes.

1 Q. Okay. So now, you arrived on scene at
2 6:10, 1810; correct?

3 A. Yes.

4 Q. In military time, 1810; right?

5 A. Yes.

6 Q. And I'm going to show you this report
7 again. The -- the EMTs also use military time too;
8 right?

9 A. Yes.

10 Q. So they were dispatched at 1721?

11 A. Yes.

12 Q. And they were en route at 1722?

13 A. Yes.

14 Q. Arrived on scene at 1740?

15 A. Yes.

16 Q. Okay. And then they left for the
17 hospital at 1756. See that?

18 A. Yes.

19 Q. Okay. And then they arrived at the
20 hospital at 1810. See that?

21 A. Yes.

22 Q. So they were actually at the hospital
23 with this patient, this female patient they were
24 conducting CPR on, at 1810.

25 A. Yes.

1 Q. Okay. And you don't have any reason to
2 dispute Dustin Chambliss' records, do you?

3 A. No.

4 Q. All right. You say you arrived on scene
5 at about -- at the scene of the -- of the accident
6 at 1810 yourself; correct?

7 A. Yes.

8 Q. So when you were arriving at the accident
9 scene, they were already at the hospital?

10 A. Yes.

11 Q. According to this record; correct?

12 A. Yes.

13 Q. So is it possible that you're
14 misrecollecting -- and it's not a big deal. This
15 is, like, a year and a half ago.

16 But is it possible that you're
17 misrecollecting this CPR incident?

18 A. No. Somebody else was getting worked on.

19 Q. Okay. And your testimony is that someone
20 else is getting worked on -- was getting worked on?

21 A. Yes.

22 Q. And if I represent to you that there's no
23 record of anybody else getting worked on except for
24 Ms. Brown and --

25 MS. POLK: Your Honor, objection. That

1 misstates the evidence.

2 MR. LI: I'm not done with the question.

3 THE COURT: Go ahead and finish the question.

4 Q. BY MR. LI: If I represent to you, sir,
5 that there is no record of anybody else getting
6 worked on except Ms. Brown and one other male
7 patient, would you have any reason to dispute that?

8 MS. POLK: Your Honor, same objection.

9 THE COURT: It's probably worked on?

10 Q. BY MR. LI: I'm sorry. CPR. Having CPR
11 conducted on them.

12 THE COURT: You may answer that.

13 THE WITNESS: Can you restate the question?

14 Q. BY MR. LI: Sure. If I represent to you
15 that there is no other record of anybody else
16 receiving CPR at Angel Valley other than Ms. Brown,
17 which is the report I just showed you, and a male
18 who received CPR, would you have any reason to
19 dispute that?

20 A. No.

21 MR. LI: If I could have Exhibit 379 up.

22 Q. Now, this is another Verde Valley Fire
23 District report. And this is where -- if I can --
24 if I represent this to you as this is James Shore's
25 report from the EMT -- okay?

1 **A. Okay.**
 2 **Q.** Are you with me?
 3 And so this is a guy named Greg
 4 Vanderhaar?
 5 **A. Yes.**
 6 **Q.** And he came -- do you know him?
 7 **A. No.**
 8 **Q.** Another good guy. He came in here and
 9 testified about the CPR he did on Mr. Shore.
 10 **A. Okay.**
 11 **Q.** Okay? And Mr. Shore was in cardiac
 12 arrest and pulseless and not breathing. Do you
 13 have any reason to dispute that?
 14 **A. No.**
 15 **Q.** Okay. And those are the circumstances
 16 under which you're supposed to conduct CPR; right?
 17 **A. Yes.**
 18 **Q.** So bystander CPR was in progress, and
 19 they hooked up the AutoPulse, and there was no
 20 pulse. He was unconscious and unresponsive.
 21 Sorry. You can -- see there, unconscious
 22 and unresponsive.
 23 **A. Yes.**
 24 **Q.** And he was in cardiac arrest,
 25 pulseless -- pulseless and apneic.

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1 **A. Okay.**
 2 **Q.** Okay? And then you -- he's in cardiac
 3 arrest, he has no pulse, and he's not breathing.
 4 **A. Yes.**
 5 **Q.** And those are the circumstances under
 6 which you do CPR?
 7 **A. Yes.**
 8 **Q.** All right. Now, Mr. Vanderhaar also uses
 9 military time to describe his activity.
 10 And if we could just blow up the times.
 11 You agree with me he was dispatched at
 12 1719?
 13 **A. Yes.**
 14 **Q.** He was en route 1722?
 15 **A. Yes.**
 16 **Q.** He was on scene 1740?
 17 **A. Yes.**
 18 **Q.** And he left for the hospital at 1803?
 19 **A. Yes.**
 20 **Q.** So is it fair to say that he left for the
 21 hospital, had the guy loaded up in -- in the
 22 ambulance and was already on the way to the
 23 hospital about the time you were arriving?
 24 **A. Yes.**
 25 **Q.** And he might have actually been one of

1 the ambulances you saw going by you --
 2 **A. Yes.**
 3 **Q.** -- in the other direction?
 4 Okay. Now, just so we're clear, if I
 5 represent to you that these two folks are the only
 6 people for whom there are records that show CPR --
 7 MS. POLK: Your Honor --
 8 MR. LI: May I finish?
 9 THE COURT: Yes.
 10 **Q.** BY MR. LI: -- would you have any reason
 11 to dispute that?
 12 THE COURT: Ms. Polk.
 13 MS. POLK: Your Honor, counsel would agree
 14 that those are records limited to what has been
 15 here at trial as opposed to records in general.
 16 THE COURT: I think that was the nature of the
 17 question.
 18 MR. LI: Yeah.
 19 **Q.** I mean, of the medical records for any of
 20 the participants in this case, would you have any
 21 reason to dispute that?
 22 **A. No.**
 23 **Q.** And, again, it's a year and a half ago.
 24 And is it possible that you're just misremembering
 25 that somebody was getting CPR?

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1 **A. No.**
 2 THE COURT: It's getting close, Mr. Li. You
 3 want to stop now, we can do that.
 4 MR. LI: Well, I'll take the three minutes
 5 just to be -- just so we can be as efficient as
 6 possible.
 7 THE COURT: All right.
 8 **Q.** BY MR. LI: And you had discussed with
 9 Ms. Polk on direct the use of various sort of a
 10 HazMat device, a sniffer device?
 11 **A. Yes.**
 12 **Q.** Right?
 13 Now, that's -- you're -- you're a first
 14 responder; right? I mean, you're one of the people
 15 who actually shows up to a scene when something is
 16 going on; correct?
 17 **A. Yes.**
 18 **Q.** And you -- you work at -- you work in the
 19 drug detail?
 20 **A. Yes.**
 21 **Q.** Okay. And unfortunately one of the real
 22 big problems there are throughout the United States
 23 is meth labs; correct? Methamphetamine labs?
 24 **A. Yes.**
 25 **Q.** And you've worked a lot of meth labs

1 in --

2 **A. A couple.**

3 **Q.** Is meth a big problem in Yavapai County?

4 **A. Not as much as it used to be.**

5 **Q.** Okay. So that's good. But one of the
6 things you see is that there's a lot of toxic
7 chemicals that are being stirred up in these meth
8 labs; correct?

9 **A. Yes.**

10 **Q.** And some of them are extremely
11 explosive --

12 **A. Yes.**

13 **Q.** -- correct?

14 And so what you use the sniffer device
15 for is you -- you poke it in through the door to
16 make sure that when you go in there you don't
17 breathe in some toxic fume or it doesn't blow up on
18 you --

19 **A. Yes.**

20 **Q.** -- correct?

21 And now, these -- these devices, they
22 don't -- they don't -- they're not forensic
23 devices. They're not -- it's not the same as
24 sending something to the lab, is it?

25 **A. No.**

1 **Q.** It's just a am I going to be in danger or
2 am I not going to be in danger; correct?

3 **A. Correct.**

4 **Q.** And, in fact, the -- the Verde Valley
5 Fire Department uses the Orion Multigas Detector;
6 correct?

7 **A. Yes.**

8 **Q.** That's what you saw them use; correct?

9 **A. Yes.**

10 **Q.** And you've probably used them yourself?

11 **A. No.**

12 **Q.** Okay. Well, you know, though, that the
13 Orion Multigas Detector only checks for about four
14 gases?

15 **A. Yes.**

16 **Q.** And those gases are sulfur dioxide?

17 **A. Yes.**

18 **Q.** Oxygen?

19 **A. Yes.**

20 **Q.** Carbon monoxide?

21 **A. Yes.**

22 **Q.** And then what's called "LEL." But it's
23 a -- basically, is it going to explode?

24 **A. Yeah. Flammable vapors.**

25 **Q.** Flammable vapors; right?

1 It doesn't test for say, methamphetamine?

2 **A. No.**

3 **Q.** If you wanted to test methamphetamine,
4 you would take the powder, stick it in an evidence
5 bag; correct?

6 **A. Yes.**

7 **Q.** You'd get a sample from a criminalist;
8 correct?

9 **A. Yes.**

10 **Q.** And then they would send it to DPS or
11 somebody to test it for the presence of
12 methamphetamine; correct?

13 **A. Yes.**

14 **Q.** Where do you send it?

15 **A. To DPS.**

16 **Q.** DPS. Okay.

17 And also you know these -- these Orion
18 Multigas Detectors -- they don't test for -- they
19 don't check for organophosphates; right?

20 **A. That's correct.**

21 **Q.** And I mean, I don't know if you've been
22 in the military. But the folks who actually have
23 the devices that check for organophosphates, those
24 are, essentially, military -- you know --
25 special -- specialized tools to actually -- you

1 know -- stick it in to search for organophosphates;
2 correct?

3 **A. Yes.**

4 **Q.** Because of terrorism and those sorts of
5 things; right?

6 **A. Yes.**

7 **Q.** Now, it also is used at shipping yards
8 and what have you to test for pesticides. Did you
9 know that?

10 **A. No.**

11 **Q.** Okay. Well, when a container ship comes
12 in from, say, Costa Rica filled with bananas, you
13 don't want to open it up and have the workers suck
14 down a bunch of insecticides, do you?

15 **A. No.**

16 **Q.** And so what -- what they do -- do you
17 know that what they do is they stick in a draeger
18 tube and -- and check and see if there's any
19 organophosphates? Do you know that?

20 **A. I do now.**

21 **Q.** Okay. That's not a tool you have,
22 though; correct?

23 **A. No.**

24 **Q.** And that's not a tool that was being
25 deployed that night; correct?

1 **A. That's correct.**

2 **Q.** And all that was being checked for is
3 oxygen, carbon monoxide, sulfur dioxide, and
4 explosive gases?

5 **A. Yes.**

6 **Q.** Not organophosphates?

7 **A. That's correct.**

8 MR. LI: Your Honor.

9 THE COURT: Thank you, Mr. Li.

10 Ladies and gentlemen, we will take the
11 evening recess at this time. Please remember the
12 admonition. Follow that, of course. And
13 reassemble usual time at 9:15.

14 And you are excused at this time too,
15 Sergeant. The rule of exclusion of witnesses has
16 been invoked, and I'm sure you under -- know what
17 that means.

18 THE WITNESS: Yes.

19 THE COURT: You can't communicate or discuss
20 the case with any other witness until the matter is
21 over -- the trial is over. You can talk to the
22 lawyers as long as other witnesses aren't present.
23 There's a little reminder.

24 So you are excused at this time.

25 I'm going to ask the parties to remain a

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1 moment.

2 Thank you.

3 (Proceedings continued outside presence
4 of jury.)

5 THE COURT: I'm sorry to hold you. I'm going
6 to start the discussion anyway. It doesn't have to
7 do with evidence.

8 I'm asking Heidi to bring Juror No. 10 in
9 for a brief discussion. And Heidi had the concern
10 about being on camera. But he won't be. I mean,
11 we'll have the discussion, but obviously the -- the
12 usual rule that there won't be any showing of the
13 juror.

14 And I -- just to -- to let people know
15 what I'm going to say. I covered this but I
16 thought about it some more. Just to let him know
17 that we have been considering this, that it's
18 important to everybody, that the trial may or may
19 not be completed by those dates, June 16, 17.

20 And if this trial is still proceeding at
21 that time, he can make requests. I may -- you
22 know -- I'll consider what I'm going to do with
23 regard to either continuing it or -- you know --
24 just whatever request might be if it's not. That's
25 going to be something that will be decided at that

1 point.

2 And what I want to know is because I
3 can't be any more certain whether that's going to
4 be a distracting factor for him.

5 Okay. And it'll be recorded, but the --
6 Dennis is well aware not to -- to have anybody
7 shown. So before -- just give us about -- well,
8 just wait here.

9 He can't hear; right?

10 THE BAILIFF: I need to make sure of that.

11 THE COURT: Okay.

12 MR. LI: Your Honor, regarding the camera,
13 could we just not have the camera for this?

14 THE COURT: I don't --

15 MR. LI: Does the state object? I don't -- I
16 don't know if this is something the public has to
17 know about. It seems unnecessary to have the
18 cameras.

19 THE COURT: Well, I -- it's just going to be a
20 pretty basic process here. So let's do that.

21 Now, that I've just finished a little
22 recitation, did anybody have anything to add to
23 that?

24 Ms. Polk.

25 MS. POLK: Your Honor, I -- I believe I

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1 understand what you said. Are you going to make it
2 clear to him that he is not necessarily going to
3 have to miss his trip?

4 THE COURT: I -- not necessary -- that's the
5 way to put it. Not necessarily. Not necessarily.
6 But I'm not going to be able to make that decision
7 unless that comes up. It may not come up.

8 MS. POLK: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 Mr. Li, anything to add?

11 MR. LI: No, Your Honor.

12 THE COURT: Okay.

13 MS. POLK: Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 (Juror No. 10 enters the courtroom.)

16 THE COURT: Thank you, sir. If you could just
17 have a seat right there.

18 JUROR NO. 10: Sure.

19 THE COURT: First of all, I want you to know
20 that -- that I have received that -- the note
21 and -- and the parties have seen that. I'm not
22 ignoring you in any way. It's important to all of
23 us. And -- and it's -- it's being considered.

24 I have to tell you right now, I can't
25 give you all the information I think you'd like to

1 have at this time. I'm pretty sure you told us at
2 the very start, right during the voir dire, you had
3 these plans. So this is not something that's new.
4 It's something that we've all known.

5 And the -- I'll tell you this: The trial
6 may be completed by June 16 and 17. I think those
7 are the two days you're concerned with. Correct?

8 JUROR NO. 10: Right.

9 THE COURT: Is that a Thursday and Friday?

10 JUROR NO. 10: If you'll allow me, I don't
11 need an answer. I just -- I'm committed to the
12 trial. And, I mean, that -- in fact, I've -- I've
13 even scheduled an operation, a minor operation, to
14 be done during our -- our week off -- you know --
15 just so there's no conflict.

16 And I'm flexible on that. It would be
17 great if I could attend that. But if I can't, I'm
18 committed to the trial. I just want you to know
19 that.

20 THE COURT: Okay. And I -- we all appreciate
21 that. I'll just say, I don't -- I don't know. If
22 we get to the 16th and 17th, the situation is what
23 it is, there can be -- you can make a request, and
24 we can deal with it then.

25 But I need to know this: I want to make

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1 sure that you would not be distracted and
2 preoccupied because there's this element of
3 uncertainty. That's what I need to know.

4 Are you -- is the fact that you've had
5 this long and -- this trip planned for -- for some
6 time and it's an important occasion for the
7 family -- is that going to distract you so that you
8 would not be able to focus on the evidence here in
9 court?

10 JUROR NO. 10: No.

11 THE COURT: Okay.

12 JUROR NO. 10: Worst case scenario is I leave
13 after 4:00 on Friday and go up there and only have
14 a day and a half with them. That's -- or two days.
15 That's the worst case scenario. So --

16 THE COURT: Okay.

17 JUROR NO. 10: No. That would not be an
18 issue.

19 THE COURT: Thank you, sir. You are excused.

20 (Juror No. 10 leaves the courtroom.)

21 THE COURT: Please be seated.

22 MR. LI: That answers that.

23 THE COURT: Is there anything else you want to
24 take up this evening?

25 Ms. Polk?

1 MS. POLK: No, Your Honor.

2 THE COURT: Mr. Li?

3 MR. LI: No, Your Honor.

4 THE COURT: Okay. We'll be in recess. Unless
5 there's a legal matter, I want to start as close to
6 9:15 as possible. If there is something that comes
7 up, please let me know so we can do that without
8 delaying the trial.

9 Thank you.

10 (The proceedings concluded.)

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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 23rd day of May, 2011.

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MINA G HUNT, AZ CR No 50619
CA CSR No. 8335

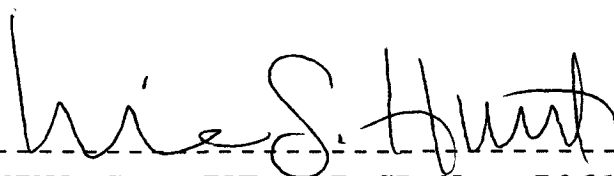
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)
4

5 I, Mina G. Hunt, do hereby certify that I
6 am a Certified Reporter within the State of Arizona
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14 to, employed by, nor of counsel for any of the
15 parties or attorneys herein, nor otherwise
16 interested in the result of the within action.

17 In witness whereof, I have affixed my
18 signature this 23rd day of May, 2011.
19
20
21

22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335